XIV/222

Proposed Amendment of the Revenue Sale Law and Public Demands Recovery Act in Bengal.

1894

Sub: Law & Legislation/ Sale Law/ Public Demands 1894

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No. $\frac{304}{90}$ L R., dated Calcutta, the 24th January 1890.

From—P. NOLAN, Esq, Secy. to the Govt. of Bengal, Revenue Dept,
To—The Secretary to the Board of Revenue, Land Revenue Department.

I AM directed to enquire, with reference to the proposals for the amendment of the Sale Laws now under consideration, how the provision in Bengal Act VII of 1868 making tenures saleable for arrears of revenue has worked in practice.

Tenures are described in the Act as including all transferable interests in land other than estates, and would therefore include rights of occupancy when these are transferable by custom. It is understood that the procedure of the Sale Law has in fact been applied in realizing the rent of the aymadars of Midnapore, some of whom are actual cultivators of the soil, and doubts have been suggested as to the advisability of insisting in such cases on the strict punctuality, under pain of summary sale, properly required with regard to the owners of estates.

No. 3240I, dated Calcutta, the 15th March 1890.

From—J. W. P. MUIR-MACKENZIE, Esq, Under-Secretary to the Govt. of India, Revenue and Agricultural Department,
To—The Secretary to the Government of Bengal, Revenue Department.

IN continuation of my letter No. $\frac{14OI}{186}$, dated the 29th November 1889, I am directed to intimate the general approval by the Government of India of the proposals to prepare Bills for amending the Revenue Sale Law on the lines suggested in Mr. Buckland's letter No. 3674—1230L.R., dated the 28th September last. As, however, it appears from paragraph 2 of that letter that the object is to elicit public opinion on the measures proposed, the approval of His Excellency in Council is subject to consideration of such opinions as may be received.

2. I am to add that the Government of India prefers that the question whether the proposed legislation is to be undertaken by the Imperial or Local Legislative Council should be decided after Mr. Beames has prepared the draft Bills and the exact scope of the legislation is known. The Imperial Government will then be better able to judge whether the Local Council is competent to deal with the measure.

Dated Calcutta, the 3rd May 1890

From—JOHN BEAMES, Esq, on Special Duty,
To—The Secretary to the Government of Bengal, Revenue Department.

As directed in Government Resolution of the 2nd December 1889 (Land Revenue), received with your No. 4240—1443L. R., dated 7th December, I have now the honour to submit two draft Bills, one to codify and amend the Revenue Sale Law, and the other to amend the Public Demands Recovery Act [VII (B.C.) of 1880]. A Statement of Objects and Reasons is appended to each Bill, explaining in detail the nature of the amendments and alterations proposed.

2. The amendments and new provisions in the Revenue Sale Bill may be divided into three classes—

(i) The proposals submitted to the Government of India in Mr. Buckland's letter No. 3674—1230L.R., dated the 28th September 1889.

(ii) Suggestions made by myself and approved by Government.

(iii) Minor amendments (chiefly verbal) arising out of the process of consolidation and re-arrangement, or necessitated by other amendments.

3. The following is a complete list of the amendments of the first class, with the sections of the Bill in which effect has been given to each. They are mentioned in the order in which they occur in the Government letter:—

(1) The ruling in the case of *Lala Mobarak Lall* versus *Government and others*, mentioned in paragraph 4 of the Government letter, has been met by

section 41 of the Bill, and by alterations and additions of a few words in sections 42 and 52. The steps to be taken to meet this ruling were suggested in my note of the 6th December 1889, and accepted by Government provisionally, and subject to future consideration, in orders of the 8th January.

(2) The extension of the system of common and special registry to tenures of all grades (paragraph 8 of the letter) has been effected by special alterations in section 64, 66 (clause 6), and 75 of the Bill, and generally by rectification of the terminology throughout Part VI. I submitted suggestions regarding section 66, clause 6, in my note of the 28th January, on which orders were passed by Government on 10th February.

(3) Interpreting the law on the subject of giving possession under section 29 of Act XI (paragraph 11 of the letter). On this subject I also received copy of correspondence ending with your No. 312—96L.R., dated 24th January, to address of the Board. Closely connected therewith is the question of the issue of the certificate under section 28 of Act XI. Effect has been given as far as was practicable to the wishes of Government by alterations in sections 50 and 51 of the Bill. The Board agreed with me in not considering it advisable to insert a provision making the payment of the stamp on the certificate compulsory; and as Government did not distinctly order that this should be done, but merely suggested it, I have considered myself at liberty not to adopt the suggestion. My reasons for preferring the course followed in the amendments, which will render the taking of the certificate almost a necessity, are given at full length in the Statement of Objects and Reasons, paragraphs 33 to 38.

(4) Giving notice of default to proprietors (paragraph 12 of the letter) has been provided for in section 14 of the Bill. The question of levying fines for late payments, closely connected therewith, has been met by sections 11 and 12 of the Bill. The suggestion of a graduated scale of fines was made by me in my note of the 12th December, No. II, and was approved in Government orders thereon; dated 7th January 1890.

(5) Recovery by certificate procedure of excess payments of revenue by shareholders in an estate (paragraph 14 of the letter) has been effected by section 16 of the Bill. Complementary provisions have also been inserted in the Public Demands Amendment Bill.

(6) Extension of the right of appeal to other than defaulting proprietors (paragraph 15 of the letter) has been provided for by making the necessary alteration in section 46 of the Bill.

(7) Increase of rate of interest payable on refund of purchase-money when a sale has been annulled (paragraph 15 of the letter) to 12 per cent. per annum has been made in sections 46, 48, and 78 of the Bill.

4. The amendments of the second class are partly included in those of the first class mentioned above, and partly consist of the following:—

(1) Provisions regarding the disposal of surplus sale-proceeds contained in sections 54 and 55 of the Bill, referred to in my note of 10th January, and Government orders thereon of 1st February. My proposals in this note were apparently not fully understood. I had no intention of altering the law of limitation. I have, however, given effect to the wishes of Government in the two sections mentioned above.

(2) Prohibition of opening separate accounts for a revenue of less than one rupee in section 24 of the Bill. My note of 12th December, Part I, and Government orders thereon, dated 7th January.

(3) Provision for closing of separate account by a Collector *suo motu* in section 28 of the Bill. My note referred to in the last paragraph.

(4) Deposit of costs by appellant urging hardship in section 47 of the Bill. This did not receive the direct sanction of Government on a note from me, but had already been sanctioned as a reference from the Board, whose circular on the subject has merely been transferred to the Bill.

(5) Alteration of section 30 of Act XI in respect to liability and rights of purchasers in section 56 of the Bill. This question was submitted in my note of 25th January, and Government order thereon was issued on 9th February.

5. The amendments of the third class need not perhaps be specified in detail. They are such as necessarily occur in reconstructing any enactment, and have been printed in italics for facility of reference, as, for instance,

sections 1, 2, 3, 5 and 8; the recasting of sections 19 to 22; the explanation to section 38, and sections 62, 72 and 83. In most of these cases I have consulted the Board before making alterations, and the whole Bill, when first cast into its present form, was read by the Assistant Secretary to Government in the Legislative Department, who has kindly corrected the wording where necessary to give it the proper legal form, and has supplied the provisions regarding extent of the Bill and repeal of previous enactments.

6. The second Bill, that for the amendment of the Public Demands Recovery Act, contains only two amendments of major importance, though there are several minor ones. In the Government letter above quoted the principal amendment mentioned is that arising out of the High Court's decision in the case of *Sadhusaran Singh* versus *Panchdeo Lall* (paragraph 3). The steps adopted to give effect to the amendment prescribed by Government are detailed at full length in paragraphs 20 to 26 of the Statement of Objects and Reasons.

7. The only other matter in connection with this Bill mentioned in the Government letter was the entire separation of the certificate process from that for recovery of arrears of revenue, and the consolidation of all enactments referring to the former into one enactment. This has been effected principally by minor verbal corrections in various sections. There are, however, no other Acts besides Bengal Act VII of 1880 bearing on the subject of certificates, and requiring to be consolidated into one Bill.

8. Of other amendments it may be mentioned that in dealing with the principal one, the separation of the functions and powers of the Collector of the district from those of an officer authorized to exercise the powers of a Collector—an amendment which affects many sections of the Bill—I have consulted the Board of Revenue and been guided by their advice. The matter being a purely technical one, it did not seem necessary to trouble Government with a special reference. The other amendments are of a petty nature, referring to issue of notices, costs and other technicalities, and are sufficiently explained in the Statement of Objects and Reasons.

9. In conclusion, I would state that in respect to both Acts I have read and considered all the rulings of the Privy Council and High Courts that I could trace, and have also gone carefully through all the files in the office of the Board, which were placed at my disposal. In dealing with enactments covering so wide a range of subjects, it is impossible to be sure that everything bearing on the matter has been read. I have endeavoured, however, to obtain all the information available, and I trust that no serious omissions will be found in either Bill.

DRAFT BILL

TO

Amend the Revenue Sale Law.

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DRAFT BILL

TO

Amend the Revenue Sale Law.

WHEREAS it is expedient to consolidate and amend the laws relating to the sale of land for arrears of revenue and other demands realizable as arrears of revenue in the territories administered by the Lieutenant-Governor of Bengal: It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. *This Act may be called "The Revenue Sale Act,* 189 *."*

It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal, except the town of Calcutta and the scheduled districts other than the Sonthal Parganas, Western Jalpaiguri the Western Duars, the districts of Darjeeling, Hazaribagh, Lohardaga, Manbhum, the pargana, of Dhalbhum, and the Kolhan in the district of Singhbhum.

Extent.

It shall come into force on such date (hereinafter called the commencement of the Act) as the Local Government, with the previous sanction of the Governor-General in Council, may, by a notification in the Calcutta Gazette, *direct.*

Commencement.

2. *On the commencement of this Act, the Regulations and Acts specified in the first schedule hereto annexed are hereby repealed to the extent specified in the third column of that schedule, save so far as regards the trial of any suits that shall be pending at the time of the said commencement.*

Repeal.

But this repeal shall not receive any office authority, or thing abolished by such enactments, nor affect the validity of anything done or suffered, or any right, title, liability, or obligation accrued before the commencement of this Act.

All rules prescribed, appointments made, powers conferred, and notifications published under any such enactments shall, so far as may be, be deemed to be respectively prescribed, made, conferred, and published under this Act.

Any enactments or documents referring to any enactments hereby repealed shall be construed to refer to this Act or the corresponding portion thereof.

The trial of any suit which shall be pending at the time of the commencement of this Act shall proceed and be completed as if this Act had not been passed.

Act VII (B.C.) of 1868, section 1, with addition of the words in italics from the Tenancy Act.

3. In this Act, unless there be something repugnant in the subject or context,—

Definitions.

"Estate" means any land or share in land subject to the payment to Government of land revenue, *and included under one entry in the general register of revenue-paying lands prepared and maintained by the Collector of a district* under the Land Registration Act, 1876, *or of the law for the time being in force*; or in respect of which a separate account may, in pursuance of section 22, have been opened.

"Proprietor" *means a person owning, whether in trust or for his own benefit, an estate, or a part or share of an estate* and includes any *person* by whom any estate or independent tenure is held directly under Government.

The words in italics are from the Tenancy Act, and the rest from Act VII (B.C.) of 1868, section 1.

"Revenue" includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof.

Ibid.

"Tenure" includes all interests in land, whether rent-paying or lakhiraj (*not being* estates as above defined *nor raiyats' holdings as defined in, the Bengal Tenancy Act*, 1885), and all fisheries, which by the terms of the grants creating the same, or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument.

Ibid.

"*Independent tenure*" *means a tenure not being an estate the revenue of which is payable to Government.*

New, with reference to Act VII (B. C.) of 1868, section 11.

"Incumbrance" means a charge upon or a claim against land arising out of a private contract.

"Jurisdiction" of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorized to exercised such powers.

Ibid.

"*Board*" *means the Board of Revenue for the Lower Provinces of Bengal.*

New.

"*Commissioner*" *means the Commissioner of Revenue of a Division.*

"*Collector*" *means the Collector of a district, and includes any officer invested by the Lieutenant-Governor with the powers of a Collector under this Act.*

"Recorded Proprietor" means any proprietor of an estate or share of an estate whose name and the character and extent of whose interest in the estate are registered in the General Register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force.

Act VII (B. C.) of 1876, section 3 (9).

"*Section*" *means a section of this Act.*

New.

"*Official year*" *means the year commencing on the first day of April.*

4. Every estate shall, for the purpose of this Act, be deemed to be within the Collectorate of the Collector upon whose General Register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the Collectorate of any other Collector.

Act VII (B. C.) of 1868, section 10.

Collectorate to include all estates borne on its roll.

PART II.

Of Proceedings before Sale.

5. If the whole or a portion of an instalment of revenue due for any month of the era according to which the settlement and

Act XI of 1859, section 2.

Arrear of revenue defined.

list of instalments of any estate have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Act XI of 1859, section 3.

Latest day of payment.

6. The Board shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the *Calcutta Gazette*, and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the Collector, in the Courts of the Judge Magistrate, and Munsifs, and at every police-station of that district; and the dates so fixed shall not be changed except by the said Board by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

Act VII (B.C.) of 1868, section 11, first part, as amended by Act II (B.C.) of 1871 (slightly altered).

Power to sell independent tenures.

7. Whenever any revenue payable to Government in respect of any independent tenure shall be in arrear after the latest day of payment fixed in the manner prescribed in section 6, the Collector to whom such revenue is payable may cause such tenure to be sold in the manner and subject to the provisions hereinafter contained for the sale of estate for the recovery of arrears of revenue.

Act XI of 1859, section 5.
Act VI B.C. of 1868, section 11, as amended by Act (B.C.) 1871.

Notification to be made in the case of certain descriptions of arrears.

8. No estate, and no share or interest in any estate, and no independent tenure, shall be sold for the recovery of arrears accruing while under attachment by order of any judicial authority or managed by the Collector in accordance with such order, otherwise than after a notification in the language of the district specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment according to section 6, in the office of the Collector, in the Court of the Judge, and in the Munsif's Court and police-station within whose jurisdiction the estate or share of an estate to which the notification relates is situated; or if the estate or share of an estate be situated within the jurisdiction of more than one Munsif's Court or police-station, in some one or more of such Courts or stations; and also at the kachahri of the proprietor of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate; *due service* to be certified to the Collector by the *officer in charge of every Court, office or police-station in which the notification mentioned in this section is affixed, and by the officer charged with the service thereof on the estate.*

Act XI of 1859, section 6, as modified by Act VII B.C of 1868, section 3

Notifications of sale to be issued.

9. The Collector shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 6, issue notifications in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the

estates or shares of estates and independent tenures which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than thirty clear days from the date of affixing the notification in the office of the Collector. And if the revenue of any estate or share of an estate or independent tenure to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate or independent tenure shall be published in the *Calcutta Gazette*. Except as hereinafter provided, all estates or shares of estates or independent tenures so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector, and shall be sold to the highest bidder.

Notice to raiyats.

10. Whenever an estate or share of an estate or independent tenure is notified for sale as provided by section 9, the Collector shall affix a proclamation in the language of the district in his own office, and as soon thereafter as may be in the Subdivisional Offices, Munsifs' Courts and police-stations within the jurisdiction of which the estate or share of an estate or tenure or any part of it is situated, and also at the kachahari of the proprietor of the estate or share of an estate or tenure, or at some conspicuous place upon the estate or share of an estate, forbidding the raiyats and under-tenants to pay the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

Act XI of 1859, section 7, as modified by Act VII (B.C.) of 1868, section 7.

11. *If at any time between the latest day of payment fixed in the manner prescribed in section 6 and sunset of the sixth day before the day of sale as fixed under the provisions of section 9, any payment or tender of payment is made to the Collector of a sum of money equivalent to the arrear of revenue due in respect of any estate or independent tenure, together with an additional sum, being one-fourth of the amount of such arrear, the Collector shall accept such payment or tender, and the estate or independent tenure for which such payment or tender is made shall be exempted from sale.*

Provided that, if the arrear shall exceed five thousand rupees, the additional sum aforesaid shall be one-eighth, and if the arrear shall exceed ten thousand rupees, the additional sum aforesaid shall be one-sixteenth of the said arrear.

New—*See* letter of Government, No. 3674—1230 L.R., dated 28th September 1889 paragraph 12.

Proviso in extreme cases.

12. *Exemption from sale shall not ordinarily be granted on account of any payment made after the period indicated in the foregoing section; but when he considers the adoption of such a course necessary, it shall be lawful for the Collector, after duly recording his reasons therefor, to accept payment of the amount due as an arrear of revenue in respect of such estate or tenure, together with the additional sum mentioned in the last preceding section, on any date up to and including the day of sale, and the estate or tenure for which such payment is made shall thereupon be exempted from sale.*

New—*See* Government letter as above.

Power to cause notices to be served of arrears or demands.

13. It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the *Calcutta Gazette*, to empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors before proceeding

Act VII (B.C.) of 1868, section 6, as modified by Act VII (B.C.) of 1880.

under the provisions of this Act, to realize from such proprietors any arrears of revenue which may be due from them, and the costs of serving any such notices as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue which may be due from such proprietors, and shall be recoverable as if the same were a portion of such arrears of revenue; and every such order may from time to time be altered, varied or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published.

New -Government letter as above, paragraph 12

Notice to persons registering name and address

14. *Any person interested in an estate or share of an estate or independent tenure, whether as proprietor, mortgagee, judgment-creditor, tenure-holder or otherwise, may apply to the Collector to register his name and address. Such application shall state the name and number on the Collector's rent-roll of the estate in respect of which it is made, and shall be accompanied by the fee prescribed in the third schedule annexed to this Act. On the receipt of such application and fee the Collector shall register the name and address of the applicant, and shall give him notice by registered letter of any default which may thereafter occur in payment of the revenue of such estate.*

Provided that no sale held under this Act shall be void or voidable by reason of the person addressed not receiving such letter, if it be proved that the said letter has been duly registered and posted.

PART III.

Of Protection and Exemption from Sale.

A.—Deposits.

Act XI of 1859, section 15.

Deposit for the protection of an estate from sale.

15. If any recorded proprietor of an estate, or share of an estate, or independent tenure, shall deposit with the Collector money or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the revenue of the entire estate, share of an estate, or independent tenure, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate, share of an estate, or independent tenure, the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate, share of an estate, or independent tenure, not being paid before sunset of the latest day of payment fixed under section 6, the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof, or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands, and any interest that may be due upon such securities, and may then sell and transfer the securities, for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate, share of an estate, or independent tenure, for the protection of which the said deposit was made, shall be exempted from sale for arrears

of revenue. All money and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

Act XI of 1859, section 16.

Withdrawal of the deposit.

Provided that it shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

Ibid., section 9

16. *Whenever any recorded proprietor of an estate, share of an estate, or independent tenure, shall have paid revenue in respect of such estate, share of an estate, or independent tenure, in excess of the amount proportionate to his own interest therein, he may, within fifteen days of such payment being made, move the Collector by written application to make a certificate as provided by the law for the time being in force for the recovery of public demands, specifying the amount of revenue which has been paid by such proprietor on account of the recorded share or interest of any other proprietor in the estate. Such application shall be verified by the applicant in accordance with the provisions of the Code of Civil Procedure for the verification of plaints, and shall bear a court-fee stamp of the same amount as is payable under the Court-fees Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such application.*

New—*See* Government letter as above paragraph 14 also Act IX (B.C.) of 1880, section 49.

Recovery of excess payments by certificate process.

And the Collector may, if he thinks fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; and the same notices shall be issued and the same proceedings taken thereon as in the case of such certificate.

Deposits receivable from persons not proprietors.

17. The Collector shall, at any time before sunset of the latest day of payment, determined according to section 6, receive as a deposit from any person not being a proprietor of an estate, or share of an estate, *or independent tenure*, in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate. And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share or tenure from which the arrear is due, or any part thereof it shall be competent to the said Court to order the said person to be put into temporary possession of the said estate or share or tenure, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor. And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof,

to tenure, the amount so credited shall be added to the amount of the original lien.

Act XI of 1859, section 8.

18. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever, held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter and sufficient to pay the arrear of revenue due was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless after application in due time made by the defaulter, or after the written agreement provided for in section 15, the Collector shall have neglected, or refused on insufficient grounds, to transfer it in payment of the arrear of revenue due.

Claims against Government held by a defaulter not to invalidate a sale.

B.—Separate Accounts.

Ibid., section 10.

19. When a recorded proprietor of a joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by the applicant.

Separation of shares held in common by the opening of a separate account.

Act XI of 1859, section 11

20. When a recorded proprietor of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account of it.

Separation of shares consisting of specific portions of land by the opening of a separate account.

Act VII (B.C.) of 1876, section 76.

21. When a recorded proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect. The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account thereof.

Separation of shares consisting of interest in specific portion of estate by opening separate accounts.

Act XI of 1859, portions of sections 10 and 11, and Act VII (B.C.) of 1868, portion of section 70, made into one section to avoid repetition.

22. On the receipt of an application under sections 19, 20, or 21, the Collector shall cause a copy thereof to be published in the manner prescribed for publication of notifications in section 8.

In the event of no objection being urged by any recorded proprietor, within six weeks from the date of publication of the application, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it

Procedure in opening separate accounts.

Date of commencement of separate liability.

23. The date on which the Collector records his sanction to the opening of a separate account under section 22 shall be held to be that from which the separate liabilities of the share of the applicant commence.

Act XI of 1859, last sentence of sections 10 and 11, and Act VII (B.C.) of 1876, last sentence of section 70, made into one section to avoid repetition.

No separate account to be opened for incorrect share or for share bearing revenue of less than one rupee.

24. No separate account shall be opened under section 22, in respect of the share of any applicant otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor; *nor shall any separate account be opened in respect of any share—the revenue of which is less than one rupee.*

Act VII (B. C.) of 1876, section 69 (wording modified for incorporation into this Act).

New

If objection be made, parties to be referred to the Civil Court.

25. If on the publication of the applications prescribed in section 22 any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object—

(*a*) that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or

(*b*) when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of an estate) that the amount of revenue stated by the applicant to have been heretofore paid on account of such portion of land or on account of the applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the revenue thereof.

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

Act XI of 1859, section 12, and Act VII (B.C.) of 1876, section 74.

Application to close a separate account.

26. Whenever any share in respect of which a separate account has been opened by the Collector under section 22 shall no longer correspond with the character and extent of interest held in the estate by any proprietor or jointly by one or more proprietors, any recorded proprietor of any interest in the estate for a share of which such separate account is open may submit to the Collector a written application, setting forth the circumstances under which such share no longer corresponds with the character and extent of interest held as aforesaid, and specifying the manner in which such share has been broken up and distributed among the proprietors of the estate, or the manner in which the said character and extent of interest have been changed, and praying that the separate account standing open in respect of such share may be closed; and if he so desire, that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

Act VII (B C.) of 1876, section 72

Illustration.

In a certain estate separate accounts have been opened under section 19 for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors C, D, and E.

In course of time X has inherited A's 4 annas share and also C's interest in the 7 annas share which amounted to 3 annas, X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows —

X	9	annas
B	3	"
D and E	4	"

X, if recorded proprietor of the estate, may apply to the Collector to close the separate account, which is open in respect of A's 4 annas share, and also the separate account which is open in respect of B's 5 annas shares of as neither of these shares corresponds with the extent of interest held by any one proprietor or held jointly by two or more proprietors in the estate.

X may, in the same application, also apply for the opening of a separate account in respect of the 9 annas share which he now holds Any of the other proprietors may also make a similar application.

Act VII (B.C.) of 1876, section 73, and part of 74.

Separate account may be closed and another opened.

27. (*a*) On receipt of such application the Collector shall cause a copy of the same to be published in the manner provided in section 8, and if within six weeks of the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as desired by him under section 19, 20 or 21, as the case may be.

(*b*) If any recorded proprietor object that the share in respect of which any separate account is open as aforesaid has not been broken up and does still correspond with the character and extent of interest held by any proprietor or proprietors the Collector shall proceed as provided in section 25.

New—based on Act VII (B.C.) of 1876, section 28.

Collector may close an incorrect separate account suo motu.

28. *Whenever it shall come to the notice of the Collector that a share for which a separate account has been opened under section 22 does not correspond with the character and extent of interest held in the estate by the proprietor with whom the separate account was opened, the Collector shall issue a notice to the said proprietor informing him of his intention to close the said separate account, and requiring him to state in a written application any objection he may have thereto. If within six weeks from the service of the said notice the said proprietor shall not make such application, or if the objections made by him are not in the opinion of the Collector good and sufficient, the Collector shall record a proceeding stating his reason for believing the said separate account to be incorrect, and shall order that the said separate account be closed, and it shall be closed accordingly.*

Act XI of 1859, section 13.

Sale of separate shares.

29. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector shall, in the first place, put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in section 9. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares

sold being charged with the separate portion or the aggregate of the several separate portions of revenue assigned thereto.

Act XI of 1859, section 14.

Entire estate may be sold under certain conditions.

30. If in any case of a sale held according to the provisions of the last preceding section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector shall give such certificate and delivery of possession as are provided for in sections 50 and 51 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 9.

C.—Estate under Court of Wards.

Act IX (B. C.) of 1879, section 23, as amended by Act III (B. C.) of 1881, section 4, clause 1.

Estate under Court of Wards exempted from sale.

31. Except as hereinafter provided by section 36, every estate, and subject to the provisions of section 29, every share or part of an estate for which a separate account has been opened under section 22 shall be exempt from sale for arrears of revenue which have accrued whilst such estate, share or part has been under the charge of the Court of Wards in accordance with the provisions of Bengal Act IX of 1879.

Provided that all such arrears of revenue shall be a first charge upon the sale proceeds of any estae, share or part which may be sold for any other cause than such arrears of revenue.

Ibid. clause 2.

Recovery of arrears of revenue due when estate ceases to be under charge of Court of Wards.

32. If at the time when such estate, share or part ceases to be under the charge of the Court of Wards an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit.

Provided that when such estate, share or part has been attached under the provisions of this section, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment and shall pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

Act IX (B C.) of 1879, section 23, as amended by Act III (B. C.) of 1881, section 24.

Estate belonging to minors not to be sold for arrears of revenue.

33. No estate the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same until such minor or one of such minors has completed his age of twenty-one years, but all arrear of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

But Collector may attach estate.

The Collector may on an arrear accruing on any such estate attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager, or by farming it as he may think fit for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

Act IX (B C) of 1879 section 25

When exemption from sale applies.

34. The exemption from sale for arrears of revenue given by the last preceding section shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors and entitled to such exemption has been served on the Collector before the sale.

Ibid., section 26, adding last sentence of section 32 above

Application of proceeds of farmed estate.

35. When an estate has been farmed under the provisions of section 33, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the proprietor or to his duly constituted agent or shall dispose of them in any of the modes mentioned in section 49 or section 50 of Bengal Act IX of 1879. Whenever such estate shall be released from attachment the Collector shall furnish such proprietor or his duly constituted agent with an account of the receipts and expenditure extending over the time when such estate was under attachment.

Ibid., section 23A, as amended by Act III (B.C.) of 1881, section 4.

Conditions under which estate may be sold for arrears accrued under Court.

36 Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in sections 31 and 32 of this Act contained, any estate, share, or part of any estate on which an arrear of revenue has accrued while under the charge of the Court of Wards, may at any time be sold under the provisions of this Act, if the Court of Wards has certified in writing that the interests of the ward require that such estate, share, or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

D.—Attached estates.

Act XI of 1859, section 17, penultimate sentence.

Estates under revenue attachment exempted from sale.

37. No estate held under attachment by the revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

Ibid. last sentence.

Estates under judicial attachment exempted from sale till close of the year.

38. No estate held under attachment or managed by a revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears.

of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

Explanation.—The attachment of an estate under the provisions of section 10 of the Public Demands Recovery Act is not an attachment within the meaning of this section, and does not exempt the estate so attached from sale for arrears of revenue. New.

PART IV.

Of Sales.

Sales where to be held.

39. Sales shall ordinarily be held by the Collector in the Collector's Office at the Sadar station of the district: provided, however, that it shall be competent to the Board to prescribe a place for holding sales other than such Office, whenever they shall consider it beneficial to the parties concerned. Act XI of 1859, section 9.

Adjournment of sales.

40. In case the Collector shall be unable, from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his cutcherry, and so on, from day to day, until he shall be able to commence upon or to complete the sale; but, with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid. *Ibid.*, section 20.

Procedure at sales.

41. *On the day of sale fixed according to section 9, the notifications affixed in the Collector's Office under the provisions of that section, together with the return of publication of notice in the Judge's Court and the returns of service of all and any notices that may have been issued under any of the provisions of this Act, shall be laid before the Collector, who shall satisfy himself by personal inspection of the same that all notifications and notices previous to sale by this Act required have been duly issued for the period at the places and in the manner by this Act prescribed, and on being so satisfied, he shall duly attest in a proceeding that all the requirements of this Act in respect of the publication of notifications and notices have been complied with, and such attestation shall be kept with, and form part of, the record of sale proceedings.* New. (To meet case of Lala Mobarak Lal *versus* Secretary of State and others, XI, I. L. R., Cal., p. 200.)

Collector to attest due service of notices.

If the Collector be not satisfied that the prescribed notifications and notices have been duly issued and served in respect to any estate notified for sale under section 9, he shall postpone the sale and issue fresh notifications for the period at the places and in the manner by this Act prescribed.

Order of selling.

42. *Upon completion of the attestation prescribed in the last preceding section* the sales shall proceed in regular order; the estate to be sold bearing the lowest number on the rent-roll of the Collectors's office of the district being put up first, and so on in regular sequence; and it shall not be lawful for the Collector to put up any estate out of its regular order by number, except where it may be necessary to do so on default of deposit, as provided in section 43. Act XI of 1859, section 21.

Act XI of 1859, section 22.

Deposit on account of purchase-money.

43. The person who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately or as soon after the conclusion of the sale of the estate or share as the Collector may think necessary, either in cash, currency notes, or Government securities to be valued at the market rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share shall forthwith be put up again and sold.

Ibid. section 23.

Full payment of purchase money.

44. The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth; and in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold. And in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the *Collector shall proceed to levy the difference* from him under the provisions of the Public Demands Recovery Act, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner prescribed in section 53 for the disposal thereof.

Ibid., section 24

Re-sale.

45. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 9, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in sections 43 and 44 shall be applicable to every such re-sale: provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

Ibid, section 25, as amended by Act VII (B.C.) of 1868, section 2.

Appeals against sales.

46. It shall be lawful for the Commissioner to receive *from any person injuriously affected thereby* an appeal against any sale made under this Act, so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 44, or be presented to the Collector for transmission to the Commissioner or on before the forty-fifth day from the day of sale,

reckoning as aforesaid, and not otherwise; and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate or independent tenure made under this Act *for the following reasons, namely—*

(*a*) *when the appellant is the proprietor; that the sale has not been conducted in strict accordance with all the provisions of this Act;*

New

(*b*) *when the appellant is not the proprietor' that the appellant has sustained substantial injury by reason of the sale not having been conducted in strict accordance with all the provisions of this Act.*

The Commissioner shall also (*in cases where the appeal has been made by the proprietor*) *award* to the purchaser a payment from the proprietor of compensation for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed interest at *twelve per centum per annum* on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office, and the order of the Commissioner shall in such cases be final.

The words in italics in accordance with Government letter above quoted, paragraph 15

Annulment of sale in special cases.

47. It shall be competent to the Commissioner on the ground of hardship or injustice *having been caused to the appellant*, to suspend the passing of final orders in any case of appeal from a sale, *and upon the defaulting proprietor's depositing in the Collector's office such a sum of money as is sufficient to satisfy the claim of the auction-purchaser for interest on the purchase-money, together with a sum equal to that* (*if any*) *which may have been paid by the auction-purchaser in satisfaction of the demands of Government against the estate*, the case may be reported to the Board, who, if they see cause, may recommend to the Local Government to annul the sale; and the local Government in any such case may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Act IX of 1859, section 26.

Board's circular No. 2 of April 1868.

Notification of annulment of sale.

48. The annulment by a Commissioner or by Government of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by section 50; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon *at twelve per centum per annum*, which shall be paid by the Government, unless the proprietor shall have become liable for the same under the provisions of section 46 or 47.

Act XI of 1859, section 32.
See Government letter above quoted, paragraph 15.

Sales when final.

49. All sales of which the purchase-money has been paid up as prescribed in section 44, and against which no appeal shall have been preferred, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days. And sales against which an appeal may have been preferred and dismissed by the Commissioner shall be final and conclusive from the date of such dismissal, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

Act XI of 1859, section 27, as amended by Act VII (B.C.) of 1868, section 4.

Act XI of 1859, section 28, modified in accordance with sections 316, 318, and 319, Civil Procedure Code, and Board's letter to Government, No. 873A., dated 9th November 1889.

Certificate of sales.

50. Immediately upon a sale becoming final and conclusive the *purchaser shall be entitled on application to the Collector to receive* a certificate of title in the form prescribed in the second schedule annexed to this Act, and the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons namd from the date specified therein; *on such certificate being granted* the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Munsifs and police-stations within whose jurisdictions any part of the estate or share or independent tenure sold shall be situated.

Act XI of 1859, section 29, and same references as for Section above.

Delivery of possession.

51. *When a certificate of title has been granted under section* 50, *the* Collector shall order delivery of possession of the estate or share or independent tenure purchased to be made by proclaiming to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place, or places, *that the ownership of the estate has been transferred from the former proprietor or proprietors to the purchaser*, and by affixing a copy of the certificate at the mal cutcherry or in some conspicuous place on the estate or share of an estate or independent tenure purchased; and, *if need be*, by removing any person who refuses to vacate the same, *and it shall not be necessary for the Collector to order delivery of possession to be made in any other way than is provided in this section.*

Act VII (B. C.) of 1868, section 8, words in italics new.

Certificate to be conclusive evidence of regularity in procedure.

52. *With* every certificate of title which may be given to any purchaser under the provisions of section 50 *there shall also be delivered to him free of cost a certified copy of the attestation made under the provisions of section* 41, *and such certificate and attestation* shall be conclusive evidence in favour of such purchaser and of every person claiming under him that all notifications and notices in or by this Act, required to be served or posted, have been duly served and posted, *for the period, at the places and in the manner by this Act required, and that the sale to which they refer was a sale under this Act*; and the title of any person who may have obtained any such certificate *and attestation* shall not be impeached or affected by reason of any omission, informality, or irregularity as regards the serving or posting of any notification or notice in the proceedings of the sale at which such person may have purchased.

Act XI of 1859, section 31.
Act VII (B. C.) of 1868, section 11.

Disposal of purchase-money.

53. The Collector shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate or independent tenure sold; and, secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate or independent tenure sold or their heirs or representatives to be paid to his or their receipt on demand in the manner following, to wit, in shares proportioned to their recorded interest in the estate or share of an estate or independent tenure, sold, if such distinction of shares were recorded, or, if not, then as an aggregate sum to the whole body of

proprietors upon their joint receipt. And if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor or proprietors except under precept of a Civil Court:—

Act VII B.C.) of 1868, section II

Provided that the residue, if any, of the purchase-money of an independent tenure shall be held in deposit on account of the late holder of the tenure and not on account of the proprietor or proprietors of the estate.

New.

Procedure on application by other than late proprietor.

54. *When any application for payment of the residue of the purchase-money of an estate, share of an estate, or independent tenure, shall be made to the Collector under the last preceding section by any person other than the late recorded proprietor or proprietors, the Collector may, if he shall think fit, publish a notification in the manner prescribed in section 8, requiring all persons who object to the payment of the said residue to the applicant to appear before the Collector on a day to be specified in such notification, not being less than thirty days from the date of publication thereof, and to present a written statement of their objections.*

New.

Enquiry and disposal of application.

55. *On the day fixed in the notification published under the last preceding section, or as soon thereafter as possible, the Collector shall consider the application and all objections that may be presented, and may also make such further enquiries as he shall think necessary—*

(a) *If it shall appear to the Collector that the applicant is entitled to receive the said residue, he shall make an order to that effect.*

(b) *If the applicant's claim be not proved to the satisfaction of the Collector; or*

(c) *If it shall appear to him that the objector has reasonable grounds for objecting, he shall suspend proceedings and refer the parties to the Civil Court.*

Provided that no person who shall fail to present his objection to the Collector as prescribed in the last preceding section shall be entitled at any future time to claim payment of the said residue from the Collector.

PART V.

Of the rights and liabilities of purchasers.

Act XI of 1859, section 30, modified and added to

Liability and right of purchaser.

56. The *person who shall be declared the purchaser* of an estate or share of an estate *or independent tenure under section* 43, shall be answerable for all instalments of revenue *and shall be entitled to collect rents from all tenant, and raiyas*, which may fall due after the latest day of payment aforesaid.

Ibid, section 37

Rights of a purchaser of a permanently settled estate sold for its own arrears

57. The purchaser of an entire estate in the permanently-settled districts of Bengal, Behar, and Orissa, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement;

and shall be entitled to avoid and annul all tenures and forthwith to eject all tenants, with the following exceptions :—

First.—Istamrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement.

Second—Tenures existing at the time of permanent settlement, which have not been held at a fixed rent. Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Third—Tenures created since the time of settlement, and farms for terms of years when such tenures and farms have been duly registered under the provisions of this Act.

Fourth.—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

Act VII of 1868, section 12.

Rights of purchaser of independent tenure.

58. The purchaser of an independent tenure sold under the provisions of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all tenures, and forthwith to eject all tenants, with the following exceptions:—

(*a*) The first, second and fourth classes specified in the last preceding section.

(*b*) Tenures created or recognized by the settlement proceedings of any current temporary settlement as tenures bearing a rent which is fixed for the period of such settlement.

Act XI of 1859, section 87, last two clauses. Act VII (B C.) of 1868, sections 13 and 14

Purchaser's right of enhancement.

59 And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions in section 57 contained, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise:

Proviso.

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat, having a right of occupancy at a fixed rent or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

Ibid, section 52.

Rights of a purchaser of an estate not permanently settled sold for its own arrears.

60. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like

settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of the settlement, have been competent to set aside, alter or renew, saving always and except leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or whereon mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that according to the custom of the pargana, mauzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

Act XI of 1859, section 53.

Rights of a purchaser being a sharer in any estate.

And of a purchaser of an estate not sold for its own arrears.

61. Excepting proprietors with whom the Collector under section 22 has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself shall by such purchase acquire the estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats which were not possessed by the previous proprietor at the time of the sale of the said estate.

Ibid., section 4.

Rights of purchasers of shares of estate.

62. When a share or shares of an estate may be sold under the provisions of section 29 or section 30, *whether the share or shares so sold be those for which a separate account has been opened or the remaining portion of the estate for which no separate account has been opened*, the purchaser shall acquire the share or shares subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

High Court ruling in the case of Monohur Mookerjee Hurmohun Mookerjee, 1 W. R., p. 27

Act XI of 1859, section 55

Recovery of arrears due to defaulters.

63. Arrears of rent which on the latest day of payment may be due to the defaulter from his tenants or raiyats shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

PART VI.

Of the protection of tenures.

Ibid., section 58.

Registration of tenures.

64. The following rules for the registration of tenures and of farms for terms of years shall be observed.

Act XI of 1859, section 39.

Common and special registry.

65. There shall be two sets of registers, one for common registry and one for special registry. Common registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government. Special registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

Ibid, section 40.

Application for registry.

66. The holder of any tenure desirous of registering it shall apply by petition to the Collector of the District to which the estate belongs. The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

1. The pargana or parganas in which the tenure is situated.
2. The nature of the tenure.
3. The name or names of the village or villages whereof the land is composed, or wherein it is situated.
4. The area of the land comprised in the tenure, with its boundaries in complete detail.
5. The amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it.

New.

6. The date of the deed constituting the tenure, *or, where no such deed exists, a statement of the evidence on which the applicant relies for proving that he and his predecessors in title (if any) have been in possession of the tenure for twelve years preceding the date of the application.*
7. The name of the proprietor who created the tenure.
8. The name of the original holder of the tenure.
9. The name of the present possessor, and if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

The deeds or other evidence referred to in the sixth particular above shall be submitted with the application for the consideration of the Collector.

Holders of such farms as are described in section 64 may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

Ibid., section 41.

Procedure on application for common registry.

67. When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the malcutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any person interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. If within the limited time no objection is made, the Collector shall *consider the deeds or other evidence produced by the applicant, and if he shall be satisfied of their genuineness*

New.

and sufficiency, he shall register the tenure or farm. If within the limited time an objection is made by any recorded proprietor, or by any person interested not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, *or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient,* the Collector shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall grant the application. If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure of farm.

Procedure on application for special registry.

68. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section. Act XI of 1859, section 2.

If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application, otherwise the application shall be rejected.

If within the limited time any recorded proprietor or any person interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, shall suspend proceedings, and shall refer the parties to the Civil Court, otherwise he shall proceed as if no objection had been made

If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Registration of leases of certain lands.

69. Leases of lands of the description specified in the fourth exceptional class in section 57 may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of tenures. *Ibid.* section 43.

Registration of old tenures.

70. Tenures of the first and second exceptional classes in section 57 may be registered at the option of the holders; and when so registered shall be entered only in the special register. *Ibid.*, section 44.

Application for such registry shall contain the particulars specified in section 66 so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section 67.

If within the limited time no objection is made by any recorded proprietor or by any person interested, not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy himself as to the validity of the tenure and if so satisfied, he shall report the case to the Commissioner who shall act according to the provisions of section 68; and the provisions of

the said section shall be applicable to cases in which objections shall be made.

Proviso.

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of *bonâ fide* tenures of the description herein referred to.

Act VIII (B. C.) of 1876, section 96.

Registration of rent-free tenures in estates under partition.

71. On receiving from the Deputy Collector appointed under Bengal Act VII of 1876 a notice in accordance with section 96 of that Act to the effect that a rent-free tenure has been created in an estate under partition, the Collector shall, under section 68, report the case to the Commissioner who, if satisfied that the revenue of the parent estate is sufficiently secured, shall direct the tenure to be specially registered.

Act XI of 1859, section 46

Expenses of measurement survey, or local enquiry.

72. The actual expenses of any measurement survey, or local enquiry made under sections 68 and 70 of this Act, shall be borne by the person who applies for the registry of his tenure or farm, *and shall be realized under the provisions of the Public Demands Recovery Act*; and such person may be required by the Collector from time to time to make such *payments* on this account as he may consider necessary.

Ibid., section 50.

Effect of entry in the special register.

73. Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue. Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud. But the tenure of farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

Ibid section 51.

Protection of tenures pending enquiry in case of sale of parent estate for arrears of revenue.

74. Tenures and farms of the third exceptional class described in section 57 of this Act, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section 68, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the revenue authorities upon such application be in favour of the claimant.

New.
Government letter above quoted, paragraph 8.

Period within which application may be made.

75. *Application for common or special registry or for registration under this Part may be made at any time on payment of the fee prescribed in the third schedule annexed to this Act; provided that the deed or deeds constituting or creating the tenure for registry or registration of which application is made shall have been duly registered within the period, in the manner, and at the place prescribed by the Indian Registration Act,* 1877.

PART VII.

Of the powers of Civil Courts.

Act XI of 1859, section 33.

Jurisdiction of Civil Courts in suits to annul sales

76. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made

after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of; and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under section 46; and no suit to annul a sale made under this Act, shall be received by any Court of Justice unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 49; and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase-money.

Proviso.

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Effects of annulment by decree of a Court of sales under this Act.

77. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof, otherwise the party in whose favour such decree was passed shall lose all benefit therefrom. Act XI of 1859, section 34

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And if such party shall neglect to pay any amount so recoverable, within six months from the date of such final decree, he shall lose all benefit therefrom.

If sale annulled purchase-money to be refunded.

78. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by Government, together with interest at the rate of *twelve per centum* per annum. *Ibid.* section 35 Government letter above quoted, paragraph 15.

Suit brought to oust a purchaser on the ground that the purchase was made for another person, to be dismissed.

79. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs. Act XI of 1859, section 36

Civil Court not competent to order entry in the special register

80. No Civil Court shall be competent to order the revenue authorities to enter any tenure or farm in the special register Provided always that the refusal of the revenue authorities so to register any tenure or farm shall not affect the title of the holder, whatever it may be. *Ibid*, section 47.

Suit for cancelment of registry of a tenure or farm.

81. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same. *Ibid*, section 48

PART VIII.

Miscellaneous Provisions.

Act VII (B.C.) of 1868, section 5.

Mode of serving notices.

82. Every notice in and by this Act directed to be issued shall be served by delivering to the person to whom it may be directed, a copy thereof *signed* by the Collector *and sealed with the seal of the Collector's office* or by delivering such co py at te usual place of abode of such person, or to some adult made member of his family, or, in case it cannot be so served, by affixing such copy upon some conspicuous part of the usual or last-known place of abode of such person.

In case such notice cannot be served in any of the ways herein before mentioned, it shall be served in such way as the Collector issuing such notice may direct.

Civil Procedure Code, section 78.

Explanation.—A servant is not a member of the family within the meaning of this section.

New, See section 15, Act VII (B.C.) of 1880.

Collector may refer certain cases to his subordinates.

83. (*a*) *The Collector may refer to any Assistant Collector, Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to him any application under sections* 19, 20, 21 *or* 26, *any case arising under section* 28, *any application under section* 54, *and any application for common registry under section* 67, *and such officer as aforesaid shall hear and determine such application or case accordingly. The provisions of this Act shall apply to any such officer hearing or determining such applications and cases.*

Appeals.

(*b*) *All orders passed by any officer subordinate to a Collector shall be appealable to the Collector within fifteen days; all orders passed by a Collector shall be appealable to the Commissioner within thirty days, and all orders passed by a Commissioner shall, subject to the provisions of this Act, be appealable to the Board within sixty days after the passing of such orders respectively.*

Order of Commissioner under Part VI open to revision within one year.

84. The order of a Commissioner for the special registry of a tenure under the provisions of Part VI shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the Local Government, on the ground of the Government revenue not having been sufficiently secured or of the invalidity of the tenure, as the case may be.

Ibid. section 57.

Punishment for contempt.

85. Any Collector conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine, to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the Civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector shall carry his sentence into effect. Provided that an appeal from any order passed under this section shall lie to the Commissioner, whose decision shall be final.

Ibid., section 58.

Default in making deposit to be considered a contempt.

86. A default to make good a bid by making the deposit required by section 43 shall be held to be a contempt.

Ibid., section 56.

Power of Government to purchase at a sale.

87. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid the Collector may purchase the estate on account of Government for one rupee, or if the highest bid

be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector may take or purchase the estate on account of the Government at the highest amount bid; in both which cases the Government shall acquire the property subject to the provisions of this Act.

Act III (B C.) of 1862, section 3.

Fees leviable under certain sections.

88. The Collector on the part of Government shall demand from applicants under the sections specified in the first column of the third schedule to this Act annexed the fees specified in the third column of the said schedule, which schedule shall be taken as part of this Act, and applications under the said sections shall not be received unless the said fees are tendered therewith

Act XI of 1859, section 69.

Regulations to be in force in certain estates.

89. The provisions of Regulation VII, 1822, and Regulation IX, 1825, shall be in force in every estate in any part of which a measurement, survey, or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

Act VII (B.C.) of 1868, section 9

Sales of lakhiraj to be valid.

90. All sales of land of lakhiraj tenure, which may heretofore have been held in conformity with the procedure of Act XI of 1859 for payment of arrears of revenue or of demands, shall have such and the same effect as if they had been held in execution of a decree against the person liable to pay the revenue or demand for satisfaction of which such sale may have been held.

THE FIRST SCHEDULE—(*See Section* 2).

Regulations of the Bengal Code.

New.

1	2	3
Number and year.	Subject.	Extent of repeal.
V of 1812 ...	A regulation for amending some of the rules at present in force for the collection of the Land Revenue.	Sections 24 and 25.
XI of 1822 ...	A regulation for modifying and explaining the existing regulations relative to the sale of land for the recovery of arrears of revenue, &c.	Section 36.

Acts of the Governor-General in Council.

XII of 1841 ...	An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.	Section 2.
XI of 1859 ...	An Act to improve the law relating to sales of land, &c.	The whole Act.

Acts of the Lieutenant-Governor of Bengal in Council.

III of 1863 ...	An Act to amend Act XI of 1859 ...	The whole Act.
VII of 1869 ...	An Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue.	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, and 16.
II of 1871 ...	An Act to amend the procedure for the recovery of arrears of land revenue in respect of tenures not being estates.	The whole Act.
VI of 1876 ...	An Act to provide for the registration of revenue-paying and revenue-free lands, &c.	Sections 69, 70, 71, 72, 73, and 74.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards.	Sections 23, 24, 25, and 26
III of 1881 ...	An Act to amend the "Court of Wards' Act, 1879."	Sections 2 and 4.

THE SECOND SCHEDULE (*see* section 50).

CERTIFICATE.

I certify that A. B. has purchased under Act No. the estate (*or share of an estate or independent tenure*) specified below, standing in the tauzi of the district of
and that his purchase took effect on the
day of (*being the day after that fixed for last day of payment*).

(Signed)

Collector.

SPECIFICATION.

(*If of an entire estate.*)

Tauzi number.
Name of estate.
Name of the former proprietor.
Revenue.

(*If of a share of an estate.*)

Tauzi number of the entire estate.
Name of the entire estate.
Revenue of the entire estate.
Description of the share sold.
Subordinate tauzi number of the share sold.
Name of the former proprietor of the share sold.
Revenue for which the share sold is separately liable.

(*If of an independent tenure.*)

Tauzi number, or number on Collector's register.
Name of the tenure.
Revenue.
Name of the former tenure-holder.

THE THIRD SCHEDULE (*see* section 88).

FEES.

Section.	Nature of application.	Fees payable.
1	2	3
14	For registering an address to which notice of default may be sent.	Two rupees yearly.
15	For deposit of money or securities to protect estate from sale.	Half per cent. on the amount deposited.
15	For interest or securities so deposited drawn by the Collector.	Half per cent. on the amount drawn.
5	For withdrawal of a deposit so made.	Half per cent. on the amount withdrawn.
17	For deposit for protection of estate by non-proprietor.	Half per cent. on the amount deposited.
19, 20 or 21.	For opening separate account in respect of a share or interest in an estate.	If the revenue of the estate do not exceed Rs. 1,000—at the rate of 10 per cent. upon the revenue. If the revenue of the estate exceed Rs. 1,000—at the rate of ten per cent. on Rs. 1,000 and two per cent. on all above that amount.
60, 66 or 70.	For registry of tenures ...	Two rupees on each application.

The Draft Revenue Sale Bill.

EXPLANATORY NOTES BY MR. BEAMES.

THE law regarding the sale of estates for arrears of revenue is contained principally in Act XI of 1859. A considerable portion of this Act is merely a reproduction of an older law, Act I of 1845, as that again was of Act XII of 1841. The revenue officers of the present day are therefore administering a law of all the provisions of which are thirty, and some nearly fifty, years old; and this fact alone would, in a country the development of which has been so rapid and striking as that of Bengal, be a sufficient justification for undertaking its amendment. But not only are changes rendered necessary by the altered economic conditions of these provinces, defects have been brought to light by the experience of so long a period; cases have occurred in which the meaning of particular sections has been found to be open to doubt; and modifications are called for in order to bring the law into harmony with recently introduced methods of procedure for the recovery of public demands From time to time also subsidiary and supplementary Acts have been passed having reference to specific portions of the sale law, and it is found inconvenient and even misleading to have the different parts of one and the same subject embodied in a number of separate enactments scattered all over the statute book.

2. The early history of the methods adopted for the recovery of arrears of Government revenue is fully detailed in Mr. Grimley's excellent "Manual of the Revenue Sale Law," and need not therefore be given here. A brief account of the course of legislation subsequent to the passing of Act XI of 1859 is, however, necessary to explain the method followed in preparing the present Bill.

3. The first modification took place in 1862, three years after the passing of Act XI, when by Bengal Act III of that year the scale of fees prescribed for opening separate accounts and for common and special registry in Act XI was reduced, the period allowed for registration of tenures created before the passing of that Act was extended to three years, and a period of three months from the date of the document creating them was fixed for the registration of tenures created after the passing of that Act. The reasons for, and the results arising from, this enactment will be discussed further on under the sections which refer to it.

4. The next important addition to the subject of sales was made by Bengal Act VII of 1868. The first fourteen sections of this Act supplemented omissions and cleared up doubts regarding certain points in Act XI. It supplied definitions of the principal terms used, none of which were defined in that Act. It introduced some modifications into section 25 regarding appeals, and extended the period allowed for notices of sales under section 6 from fifteen days to thirty, and that at which sales, the purchase money for which had been paid up, should become final, from thirty days to sixty. It made some new provisions regarding the service of notices: endeavoured (not perhaps successfully) to give finalty to sales and security to the purchaser by declaring that the sale certificate issued under section 28 of Act XI should be conclusive evidence that all notices required by that Act to be served had been served, and that the purchaser's title should not be "impeached or affected" by any informality in such service. It quieted certain doubts as to the legality of sales of lakhiraj tenures for arrears of revenue, and made a few minor provisions. But the most important additions to the sale law made by this Act were the provisions of section 11 and the following, which placed tenures paying revenue direct to Government on the same footing as regards sales, and gave the purchaser as near as might be the same privileges as in the case of permanently-settled estates.

The second portion of this Act created a new method of procedure called the Certificate Procedure, for the recovery of various dues and demands of Government. As this matter forms the subject of a separate Bill which is now under preparation, it need not be further alluded to here.

5. A minor amending Act (Bengal Act II of 1871) was also passed to correct certain errors which had crept into the wording of section 11 of Bengal Act VII of 1868.

6. The Land Registration Act (Bengal Act VII of 1876) introduced a comprehensive system of recording the names of proprietors of estates, which, though not specially made applicable to the sale law, reacted upon it in various ways, particularly in defining the person known as the "recorded proprietor," an expression which, when used in Act XI, had not so clear and distinct a significance as it has acquired since the passing of this Act. It is true that before this Act was passed the law required persons succeeding to the ownership of estates to have their names entered in the Collector's registers; but this proceeding, known as "Dakhilkharij," or "Nam jari," was not compulsory, and was very widely neglected, so that the distinction between a recorded proprietor and one who was not recorded had for the most part no particular value.

Apart from this point, however, a material addition to the sale law was made by sections 69 to 74 of this Act; section 69 provided that separate accounts under sections 10 and 11 of Act XI should not be opened for incorrect shares, that is, for shares which did not correspond to the interest in the estate held by the person applying for the separate account. Section 70 extended the principle of sections 10 and 11 of Act XI to cases where a proprietor held an interest in a specific portion of an estate not extending over the whole estate.

Section 72, the most important of all, enabled the Collector to close a separate account on the application of the proprietor when it no longer corresponded to the interest held by him in the estate. The remaining three sections 71, 73, and 74, laid down the procedure to be followed in opening and closing such accounts.

7. Again, in the same year the Partition Act (Bengal Act VIII of 1876) contained two provisions regulating the effect of the sale law upon estates under partition and upon shares in such estates for which separate accounts had been opened.

8. The Court of Wards Act (Bengal Act IX of 1879) also effected some change in the provisions of section 17 of Act XI, in respect to the exemption from sale of estates under the management of the Court and estates the property of minors. The sections of the Wards Act relating to these points were repealed by Bengal Act III of 1881, and re-enacted in a somewhat altered form.

9 Finally, Bengal Act VII of 1880, the Public Demands Recovery Act, which repealed (as above stated) the latter half of Act VII (B.C.) of 1868, is directed to be construed as one with Act XI of 1859 and Act VII (B.C.) of 1868, "so far as is consistent with the tenor thereof," a somewhat vague and misleading provision, because not only does the Public Demands Act treat of what has long become a totally different subject from that of revenue sales, but there is no guide as to when any provision of this Act is, or is not, consistent with the tenor of Act XI.

10. The above-mentioned Acts and portions of Acts constitute what is called the substantive law on the subject of revenue sales at the present time. The adjective law (as it is called), consisting of rulings of the Judicial Committee of the Privy Council and the High Court of Calcutta, is not very extensive nor very important. It is believed that all the really important cases will be found noticed in the detailed explanations on various sections of the Bill, and where any of them point to the necessity for amendment of any part of the law, that amendment has been inserted in the Bill. For the most part, however, the rulings are explanatory of the meaning of the law, or merely affirm its principles. In an Act like Act XI, which is to a great extent confined to executive matters, it was to be expected that the case law should be meagre. A large number of important questions has, however, been raised from time to time, and these form the subject of numerous files of correspondence in the office of the Board of Revenue. The amendments suggested by these files have been worked into their proper places in the Bill.

11. In most of these cases the conclusion arrived at by the Board, in many instances with the concurrence of Government, was that whenever a general amendment of the law might be called for, these points should be brought up for consideration. It was not, however, for some time thought desirable that a general revision of the law should be undertaken. Instances of inconvenience and difficulty caused by certain provisions of the law continued, however, to accumulate, and at length it became clear that the question was ripe for discussion. After much careful examination of the various points in a long correspondence, the details of which it is not necessary to go into here, it was resolved that legislation should be undertaken. In accordance with this decision the present Bill has been prepared.

12. The work to be done was of three kinds—

(1) Re-arrangement.
(2) Consolidation.
(3) Amendment.

First, Re-arrangement.—The sections of Act XI do not in all cases follow the regular sequence of events in the course of a revenue sale. This is due to the fact that Act XI was founded on Act I of 1845, and the new provisions which it introduced were inserted among the sections of the older Act on principles, the grounds of which cannot now be traced, but the result has been that sections which should stand together are found widely separated, while some that should be first are put last, and *vice versâ*. It has been thought likely to prove convenient to re-arrange the sections in their natural order, and to insert the sections brought in from other Acts, as also the new sections, in the order in which they would naturally fall in tracing the history of an arrear from its inception to its ultimate consequences. For the same reason the Act has, as is customary in recent enactments, been divided into parts. Thus Part I contains such preliminary matter as title, extent, commencement, repeals, and definitions. Part II treats of all processes prior to the actual sale; as the determination of what constitutes an arrear, the latest day of payment, issue of notifications and notices. Part III is also considered as prior to sale, because the protection and exemption which it affords, if availed of, would render it impossible for a sale to take place. In this part come the provisions for deposits, the opening of separate accounts, and the exemptions claimable by estates under the Court of Wards and Attached Estates. Part IV deals with the actual sale from the determination of the place where and the time when it can take place, through appeals, annulment, confirmation, and delivery of possession down to the final disposal of the surplus sale proceeds. Part V defines the rights and liabilities of purchasers of various kinds, and Part VI, which is closely allied to it, provides for the protection of incumbrances against a purchaser by common and special registry, and the incidents thereto appertaining. Part VII groups together the sections relating to proceedings in the Civil Courts, the last in the series of remedies open to the public against sales, and the Act concludes with Part VIII, which contains certain miscellaneous provisions which could not conveniently find place elsewhere.

13. *Second, Consolidation.*—This process consists in incorporating into the Bill in the appropriate places the sections of the supplementary and subsidiary Acts mentioned above.

In some cases these sections have been inserted as separate sections, in others (as, for instance, section 11 of Act VII (B.C.) of 1868) it has been found more convenient to break up the section and work the parts into the corresponding sections of Act XI.

14. *Third, Amendment.*—Under this head come the new sections and new parts of sections which have been introduced in order to carry out the orders of Government passed from time to time on references from the Board, or to give effect to rulings of the High Court, or to express the suggestions made by experienced officers and others who have been consulted. The wording of Act XI has also been cautiously modernised where needful, and, as far as was possible, vernacular words have been replaced by English equivalents. A few vernacular words have been retained as having a special technical meaning which would not necessarily be conveyed by a literal translation into English. The full details of the amendments, with the reasons for them, will be found in the following paragraphs; but it will perhaps be convenient to give in this place an abstract of the principal alterations and amendments of the existing law embodied in the present Bill—

(*a*) Definitions of the terms used in the Act have been supplied.

(*b*) The four classes of arrears and demands for which a notification is required to be issued have been reduced to one, the other three classes being practically obsolete, or provided for by other laws.

(*c*) Instead of leaving to the Collector power to receive or reject a tender of arrears made after sunset on the last day of payment, such arrears are now made legally receivable at any time between the latest day of payment and the sixth day before the day of sale, on payment of a fine not exceeding 25 per cent. of the arrear.

(*d*) When one of the proprietors of an estate pays an amount of revenue to save the estate from sale, which is in excess of the amount due from him for his interest in the estate, he can recover the excess payment from his co-sharers by the certificate procedure.

(*e*) The Collector can close *suo motu* a separate account which has been opened for a share of an estate whenever he becomes aware that the account is incorrect, *i.e.*, that it does not correspond to the interest in the estate held by the person in whose name it has been opened.

(*f*) Before holding sales for arrears, the Collector is to call for all the notifications and notices required by law to be issued, and satisfy himself that they have been properly issued, and an attestation of his having done this is to be placed on record and given to the purchaser with the certificate of sale.

(*g*) Persons other than the defaulting proprietor can appeal to the Commissioner against the sale of an estate.

(*h*) Before a reference can be made to the Board to cancel the sale of an estate on the ground of hardship, the defaulting proprietor must deposit a sum sufficient to satisfy the claim of the auction-purchaser for interest and for other demands of Government which he may have paid.

(*i*) The Collector is to give the purchaser a certificate of sale on application only, and no steps for giving him possession will be taken till he has taken out the certificate. The procedure has been assimilated to that of the Civil Procedure Code, sections 316, 318, and 319, in giving possession of immovable property in execution of decree.

(*j*) In the disposal of surplus sale proceeds the Collector is empowered, when application is made by any one who is not the defaulting proprietor, to hold an enquiry and either pay the amount or refer the applicant to the Civil Court.

(*k*) The liability of the person declared to be the purchaser under section 22 of Act XI (section 43 of the Bill), and his right to collect rents from tenants and raiyats are made to run from the last day of payment.

(*l*) The provisions of Act XI for common and special registry of talukdari tenures have been extended to tenures of all descriptions without limitation of the period within which application may be made, and at a reduced fee of Rs. 2 in each case. The only condition imposed is that where the tenures have been created by deeds such deeds shall have been duly registered, and where not created by deeds, or where the deeds have been lost, proof that the tenure has been in existence for twelve years must be adduced.

(*m*) The schedule of fees prescribed for various applications under the Act has been revised.

PART I.

15. *Section* 1.—The extent of the Bill is the same as that of Act XI as declared by various notifications from time to time issued.

16. *Section* 3.—Act XI contained no definitions. This defect was to some extent supplied by Act VII (B.C) of 1868, and the definitions in the latter Act have been inserted into this section of the Bill, those of "estate" and "proprietor" having been expanded by the addition of a few words taken from the corresponding definitions in the Tenancy Act. In the definition of "revenue" the words relating to advances for takavi, embankments, and the like have been omitted, as under the law now in force these sums are recoverable by the certificate procedure. "Tenure" has been more strictly defined. In section 1 of Act VII

(B.C.) of 1868 it was defined as all interests in land other than estates; but this definition would admit raiyats' holdings which was apparently not intended. The words "nor raiyats' holdings as defined in the Bengal Tenancy Act, 1885," have therefore been inserted. This addition is important with reference to the extension of the system of common and special registry under Part VI of the Bill. A new expression, "independent tenure," has been adopted to facilitate the incorporation of the provisions of section 11, Act VII (B.C.) of 1868, into the numerous sections of the Bill where such incorporation is necessary, and where it would not have been possible to insert the words "tenure not being an estate the revenue of which is payable to Government" without sacrificing lucidity and grammatical accuracy.

A few additional definitions of minor importance have also been inserted.

Part II.

17. This part includes all the proceedings prior to the actual sale. It consists partly of the existing provisions of Act XI, with the additions made by Bengal Act VII of 1868 worked into their proper places, and partly of some new and important provisions.

18. *Section* 8.—This is section 5 of XI with the addition of the words "independent tenures" from section 11 of Act VII. An important change has, however, been made. The section as it stands in Act XI specifies four classes of arrears, no sale for the recovery of which can take place till after issue of a notification. According to present practice, however, the first, second, and fourth of these classes are recoverable by the certificate procedure under the Public Demands Recovery Act, and in fact it is very doubtful whether arrears of the first two classes ever occur at all in the present day. These three classes have therefore been struck out and the remaining class incorporated into the text of the section. No alteration has been made in the wording of this class, as the Privy Council decision in the case of *Bunwari Lal Sahu vs. Mahabir Prosad Singh*, XII, B. L. R., p. 297, shows that there is no room for any serious doubt as to the meaning of the words as they stand.

19. *Section* 11.—This section, which is new and supersedes section 18 of Act XI, introduces a very material change in the law. Section 18 was merely a re-enactment of a similar provision in Act I of 1845, which was intended to mitigate the stringency of what is known as the "sunset law" (section 6 of Act XI), under which, if the arrears are not paid in full by sunset on the latest day of payment, the estate becomes liable to sale. But section 18 contains no instructions to Collectors as to the considerations which should guide them in accepting or refusing payment tendered between sunset of the latest day of payment and the day of sale. Frequent instructions have, it is true, been issued for the guidance of Collectors in this matter by the Board and Government, and such instructions have always inculcated a spirit of leniency. But from the nature of the case it was impossible to secure uniformity of practice in all districts, and the discretion allowed to Collectors by the law has in consequence been exercised in different ways by different officers This, though inevitable under the circumstances, exposes landed proprietors to all the inconvenience arising from uncertainty, and it is felt by Collectors themselves to be an embarrassing responsibility from which they would gladly be relieved. Act XII of 1841, the precursor of Act I of 1845, has been repealed, all but one section which provides that "there shall be no demand of interest or penalty upon any arrear of land revenue." This section it is now proposed to repeal, and having done so, to substitute for the present law section 11 of the Bill, which authorizes the Collector to accept arrears subsequent to the last day of payment, if accompanied by a graduated penalty as noted in the margin. It is not proposed to allow the Collector any option in the matter, and the result will be that default will not, as at present, be invariably followed by the extreme measure of sale, but will involve in the first instance only some additional expense. The maximum penalty has been fixed at 25 per cent. (which was the amount levied in former times under Regulation VII of 1830) in order to prevent the concession being abused and default thereby encouraged. But in order that the penalty, while heavy enough to prevent intentional postponement, may not press with undue severity on persons who default for large amounts, it is proposed to levy half the ordinary penalty for arrears exceeding Rs 5,000, and a quarter of the penalty for those exceeding Rs. 10,000. The section provides that arrears accompanied by the penalty shall be received up to the sixth day before the date of sale in ordinary cases, while section 12 of the Bill (which is also new) allows of its being received in extreme cases until the day of sale itself. Cases falling under the latter of these two sections will probably be rare, though it seems necessary to allow the Collector this small amount of option to meet peculiar and exceptional circumstances; while by fixing the close of the period for the receipt of ordinary arrears at six days before the date of sale, a stop will be put to the disturbances which not unfrequently occur in the Collector's office from defaulters arriving at the last moment and clamorously demanding permission to pay even while the sales are in progress.

When the arrear is less than Rs. 5,000	25 per cent.
Rs. 5,000 or less than Rs. 10,000	12½ ,,
Over Rs. 10,000 ..	6¼ ,,

20. *Section* 14—Is also new. It was recommended in 1814 by the British Indian Association that notices of default should be issued to certain classes of persons having claims on or interests in an estate. It was not found practicable to give effect to this suggestion at the time, nor indeed can it now be accepted in its entirety. It has, however, been provided in this section that persons having an interest in an estate may by paying a small fee, and registering their names and addresses in the Collector's office, receive notice of default by registered letter. It has been felt, however, to be necessary to provide against this

arrangement, made solely for the benefit of the public, being made use of as an argument in appeals against sales, and it has therefore been distinctly laid down that no sale shall be vitiated by non-receipt of the letter, provided it can be shown that it has been registered and posted. It is not probable that the public will avail themselves very largely of this section, and the work of a Collector's office will not be very much increased thereby. The provision, however, meets what has been asserted to be a defect in the existing law, and affords an effectual protection to those who may avail themselves of it against the estates in which they are interested being sold without their knowledge.

Part III.

21. *Sub-head A. Deposits*—Is merely a reproduction of the provisions of the existing law, and calls for no special remarks.

Section 16.—It has been represented that when any one of the proprietors of an estate pays into the Collectorate land revenue in excess of the amount due from him in order to save the estate from being sold, owing to default of his co-sharers, the only means of recovering this excess amount is by a contribution suit in the Civil Court, which is so costly and tedious a process that it is practically not worth while to resort to it. To remedy this grievance it has been suggested that the procedure of section 49 of the Cess Act (Bengal Act IX of 1880) should be extended to this class of cases, and the amount paid in excess should be recoverable by the certificate procedure. With this view this section has been inserted, taken almost *verbatim* from section 49 of the Cess Act. The two last paragraphs of that section have, however, been omitted, as they will be more appropriately placed in the Public Demands Act itself, a Bill for the amendment of which is now under preparation. A sentence has been inserted, taken from section 9 (*b*) of the Public Demands Act, making applications under this section liable to court-fee stamp as for a plaint in a money suit of similar value.

Sub-head B. Separate Accounts—Similarly contains the sections of Act XI and Bengal Act VII of 1868, referring to the opening of separate accounts, only slightly re-arranged and brought together. The only new provision is that in italics at the end of section 21, which provides on the analogy of section 11 of the Partition Act (Bengal Act VIII of 1876) that no separate account shall be opened for a share—the revenue of which is less than one rupee. Much practical inconvenience having been found to arise from opening separate accounts for extremely small shares, this course has been taken to prevent such cases from occurring.

22. *Section* 28—Supplies an omission in the existing law. While section 72 of Act VII (B.C.) of 1876 provided a procedure by which a person in whose name a separate account stands open can procure the closing of that account on the extent of his interest in the estate being changed, no provision existed by which a Collector could close a separate account *suo motu* on finding that it was incorrect. Several cases have occurred in certain districts, in which, through mistake or fraud, persons had had separate accounts opened in their name for shares in an estate larger or smaller than those which they really possessed. A share of this kind was brought to sale for arrears of revenue, and the purchaser on attempting to take possession found that the defaulter, though having a separate account opened in his name for a 4-anna share, had really been in possession of only a 3-anna share. He then under section 29 called on the Collector to put him in possession of a 4-anna share in accordance with the sale certificate granted under section 28, and as this could not be done much difficulty ensued. To remedy cases of this kind this section has been inserted, modelled on section 28 of Act VII (B.C.) of 1876. It provides for the Collector giving notice to the holder of the share, and allows him full opportunity for objection, while it enables the Collector to close the separate account if satisfied that it does not accurately correspond with the extent of the holder's interest in the estate.

23. *Sub-head C. Estates under Court of Wards.*—These sections have been transferred to the Bill from the Court of Wards Act, (Bengal Act IX of 1879 as amended by Bengal Act III of 1881). This portion of the law, it is considered, belongs more strictly to an Act concerning sales than to one concerning wards, as the action which it prescribes is taken by the Collector in the Sale Department of his office, and not in the Wards Department. One of the objects of this Bill, as explained above, being to bring together in one enactment all the scattered provisions of law relating to the subject of sales for arrears of revenue, these sections naturally fall into the place in which they have now been inserted.

24. The only change that has been made in the sections as they stood is that at the end of section35 the provision in section 32, to the effect that on an estate which has been attached for arrears due when it ceased to be under the Court, being released from attachment, the Collector shall furnish the proprietor with accounts of the management while under attachment, has been extended to the case of minors' estates similarly released from attachment.

25. *Sub-head D. Attached Estates. Sections* 37 *and* 38.—The portion of section 17 of Act XI which have not been repealed are here inserted, but they have been divided into two sections. This has been thought a more convenient arrangement, as the conditions of the two kinds of attachment are somewhat different. Some officers having entertained doubts whether the attachments of immovable property, such as a revenue-paying estate, under section 10 of the Public Demands Recovery Act was an attachment of the nature contemplated by section 17 of Act XI, operating to exempt the estate from sale for arrears of revenue, the Board have found it necessary to explain that such an attachment does not exempt from sale. It is in fact merely an attachment in execution of decree. It has been thought advisable for the removal of such doubts to embody this ruling of the Board in the present Bill, in the shape of an explanation to section 38.

PART IV.

26. *Section* 41.—In the Full Bench ruling of the High Court in the case of Lala Mobarak Lal *versus* Secretary of State and others, XI, I. L. R., Calc., p. 200, it has been held that in a case where a sale had been held less than thirty days from the date of affixing the notice prescribed by section 6 of Act XI, such sale might be set aside notwithstanding the limitations laid down by section 33. The irregularity, it was held, was not of such a nature as could be cured by the provisions of section 8, Act VII (B.C.) of 1868, and the sale was in consequence not a sale under Act XI at all. Irregularity in the issue of the notifications and notices prescribed by law having thus such serious consequences, it becomes necessary to guard against such errors in future. It is believed that in most cases of the kind the errors are caused by mistake and oversight on the part of the subordinate ministerial officers to whom the issue of such notices is usually entrusted. It has therefore been provided that before the sales actually take place all such notifications and the returns of service of all notices shall be personally examined by the Collector himself, and that he shall place on record formal attestation that he has satisfied himself by personal inspection that all that the law requires in this respect has been duly performed. The number of notifications and returns of service which the Collector will have to examine will not be great, as in most districts (if not in all) it is customary to issue only one notification under section 6 for all estates in arrear on any one sale day. Some instructions will be required to guide Collectors in securing that the dates of issue of notices and affixing of notifications are accurately recorded, and that the returns of service are intelligible and reliable. These, however, can be provided for by executive orders of the Board of Government. The attestation will have the effect noticed under section 52 *infra*, and will, it is believed, render it impossible for errors regarding the issue of notices to occur in future.

Section 42.—As a further security for the proper performance of the duty of attestation by the Collector prescribed in section 41, this section, which reproduces section 21 of Act XI, has been slightly changed. The initial words, "on the day of sale fixed according to section 6 of this Act," have been omitted, and in their place the words "upon completion of the attestation prescribed in the last preceding section" have been inserted. This will have the effect of rendering any sales illegal which are undertaken without the previous process of attestation. The only other alteration in the section is the substitution of the word "rent-roll" for the vernacular "tauzi," a practice already in force in the Boards circulars and orders.

27. *Section* 44.—A question has been raised whether the difference between two bids should be realized from the defaulting bidder by the Collector *suo motu*, or only on the application of the late proprietor. In some districts the former, in others the latter, course was pursued. It has therefore become necessary to amend section 23 of Act XI so as to clear up the point in question. It seems to have been intended that this amount should be realized by the Collector, as part of the procedure necessary for recovering arrears of revenue, and it does not seem equitable that the cost of realizing the amount should be thrown on the late proprietor who is not in any way responsible for default being made by a bidder at the sale. The words "the Collector shall proceed to levy the difference from him" have therefore been substituted for "the difference shall be levied from him." This will make it incumbent on the Collector to proceed at once of his own accord to recover the amount, instead of, as at present (in some districts), waiting till the late proprietor makes an application to that effect.

28. *Section* 46.—It is generally considered that appeals against sales can be preferred only by the defaulting proprietor, and this view, though based on no distinct provision of the law has been held by the Board, and has been confirmed by an opinion given by the Advocate-General in 1883. It rests upon the argument that as the section (section 25 of Act XI and section 2 of Act VII) prescribes that the Commissioner on annulling a sale may award to the purchaser payment from the defaulting proprietor of compensation for his loss, the proprietor must be a party to the appeal, or, in other words, the appellant. A construction of the section which would let in the persons mentioned in section 9 of Act XI, (section 17 of this Bill) would render several appeals by persons interested admissable, and this does not seem to be contemplated by the law. The ground for appeal also is simply this that the sale has been conducted contrary to the provisions of the Act, and this is practically a question between Government and the defaulter alone, and concerns no one else.

Without questioning the correctness of this view, it must be observed that it is an inference only and not a clear precept of law, and it seems therefore expedient that the law should state definitely who are the persons who may appeal. In the opinion of some officers of experience the right of appeal should be extended to others than the defaulting proprietor, and an attempt has here been made to give effect to this opinion. It is, however, a matter of some difficulty to do this, and it is questionable whether the admission to appeal of others than the defaulting proprietor may not lead to series complications. If an appeal be made by one who is not a proprietor, then the ground of the appeal could not be merely that the sale had been conducted irregularly, but it would also have to be proved that some injury had thereby been caused to the interest of the appellants, and if such appeal were decided in their favour and the sale annulled, it would not be equitable to make the defaulting proprietor, who would not have been a party to the appeal, pay compensation to the purchaser On the other hand, the law, as at present intrepreted, debars all persons, not proprietors, who may be injuriously affected by a sale, from obtaining any redress, for

section 33 of Act XI (section 74 of this Bill) provides that no sale shall be annulled by a Civil Court unless the appellant shall have first pleaded substantial injury in an appeal before the Commissioner. All remedy is therefore interdicted to those, who not being proprietors, cannot first appeal to the Commissioner.

29. Having regard to the above considerations, the section has been tentatively amended by inserting after "to receive" the words "from any person injuriously affected thereby." This renders necessary further alterations in the latter part of the section, for a person injuriously affected must plead other grounds than mere irregularity of procedure. Irregularity may be a sufficient ground for appeal as between the proprietor and Government, because the two parties are under engagements to one another, and the proprietor has a right to demand that he shall not be deprived of his estate, even though he default, except through the duly established forms of law. But with others than the proprietor Government is under no such obligation, and in their case the only ground for appeal is that the irregularity has inflicted on them some injury. This is the line taken in section 33 of Act XI, and to be consistent it must be the line taken in an appeal before the Commissioner. The words in italics have therefore been inserted.

A further alteration is also necessary to make it clear that compensation to the purchaser can only be awarded when the proprietor is the appellant. Words to this effect have therefore been inserted.

30. At the end of the section the rate of interest on compensation payable to the purchaser has been raised from "the highest rate of the current Government securites," which is generally 4 per cent, to 12 per cent. on the ground that purchasers of estates at revenue sales are frequently made with borrowed money, and that money cannot ordinarily be borrowed in these provinces at less than 12 per cent.

31. *Section* 47.—After "hardship or injustice" have been inserted the words "having been caused to the appellants," the section as it stands being open to the charge of vagueness. The portion in italics has been incorporated into the law from a circular of the Board issued with the sanction of Government under the following circumstances. On sales being annulled by Government under this section, the law gives to Government power to impose such conditions as may appear proper, but it does not state how those conditions are to be enforced. In the case of the proprietor refusing or neglecting to comply with the conditions, when those conditions involve his paying interest on the purchase-money, it has been held that the purchaser can only recover the amount so due to him by a civil suit. But as this is manifestly an unsatisfactory state of things, it was suggested that the proprietor, when appealing on the ground of hardship, should prove his readiness to comply with the conditions that might be imposed on him by Government by depositing beforehand the amount of interest on purchase-money and a sum sufficient to cover other payments which may have been made by the purchaser. This was the substance of the circular, and it is now thought advisable to give it the sanction of law.

32 *Section* 48.—The rate of interest has here also been raised to 12 per cent. for the reasons stated under section 46.

33. *Section* 50.—Important changes have been made in this section. The law, as it stands (section 28 of Act XI), provides that "immediately on a sale becoming final and conclusive the Collector shall give to the purchaser a certificate." But it is useless to prescribe that the Collector "shall" do something which it may not be in his power to do. The Collector cannot give the purchaser the certificate if the purchaser will not come and take it. In many districts it has been found that purchasers do not come to take the certificates, and the Collector is therfore powerless to carry out the law. The reasons for the neglect to take certificates are variously stated by different officers, but they may be practically reduced to three heads—

(1) Because the purchaser does not want to get possession. Either the defaulting proprietor has purchased the estate himself *benami* and remains in possession all along; or the purchaser retransfers the estate to the defaulting proprietor and receives back the purchase-money; or the estate has no real existance having diluviated or otherwise disappered, and the purchaser, on discovering this, simply defaults at the next kist aand so gets rid of a bad bargain.

(2) Because as the law stands the Collector notifies the transfer on the estate without waiting for the purchaser to take the certificate The purchaser thereby gets possession without difficulty, and the raiyats having heard the proclamation pay him rent without opposition. The Collector must also under section 29 give possession before the certificate is taken. Under these circumstances, unless the purchaser's title is disputed, there is no need for him to take out the certificate, all that he requires being done for him without it.

(3) Because under Article 16, Schedule I of the Stamp Act (I of 1879), the certificate must bear the same stamp as a conveyance, which amounts to one rupee on every hundred rupees of the purchase-money.

34 Undoubtedly the heaviness of the stamp duty is one of the chief causes of the general neglect to take out the certificate. But as in all cases of private sale a conveyance is required and a stamp duty is charged thereon, it is obviously fair that stamp duty should also be charged on the certificate which in revenue sales takes the place of the conveyance in private sales. The loss to the revenue by purchasers not taking out certificates is in some districts considerable, and it becomes therefore necessary to make some provision by which the taking out of certificates shall be made as far as possible compulsory.

With this object, in the first place, the words of section 28 quoted above have been omitted, and the words in italics in section 50 of the Bill substituted. This change relieves the Collector from the injunction to do what he has not the power to do, and substitutes the provision that the purchaser shall be entitled to receive a certificate on application.

35. In the second place, the procedure of this and the following section has been assimilated to that of the Civil Courts in giving possession of immovable property purchased at a sale in execution of decree as provided in sections 316, 318, and 319 of the Civil Procedure Code. The difference between this procedure and that of Act XI lies in the material point, that in the former possession is not given till the certificate has been granted. Any purchaser therefore who requires to obtain possession (as the great majority of them do) will be compelled to take out the certificate without delay. It has now been provided, by the insertion in section 50 of the words "on such certificate being granted" that the Collector will not notify the transfer in the interior of the district until the certificate is granted. The insertion of the same words at the beginning of section 51 also precludes the Collector from giving possession till the certificate has been granted. It is true that in section 316 of the Civil Procedure Code the grant of the certificate is made compulsory on the Court, and it has been ruled that the Court has no discretion, and that the purchaser may apply for it at any time within three years as provided in Article 178, Schedule 2 of the Limitation Act (XV of 1877). But there is considerable difference of opinion on this subject (see the rulings in Broughton's "notes of cases," page 440), and the same considerations are not applicable to revenue as to Civil Court sales. In the latter neither the Government nor the Court has any interest beyond that of the stamp revenue in compelling the purchaser to take out a certificate quickly, while in the former the security of the Government revenue renders it advisable that the purchaser should both take out the certificate and enter on possession without delay.

It would seem also that the words in section 316, "the Court shall grant," are always construed as contingent on application by the purchaser (see Johurmul Khruba *versus* Taran Kisto Deb, 10 I. L. R., Calc., p. 252). It is even more necessary for a purchaser at a revenue sale to get possession than for one at a Civil Court sale, because the former has now been made, under section 56 of the Bill, liable for the Government revenue from the date of his purchase, so that he is under heavy liabilities with no corresponding power of realizing rents from raiyats.

36. It is believed that all these considerations combined will, if the Bill becomes law, operate powerfully to induce purchasers to take out certificates without delay. It may be objected that these provisions only apply to the case of *bonâ fide* purchasers who really wish to obtain possession, and that they will not secure the taking out of certificates by the classes of purchasers mentioned in class (1) of paragraph 34 above, who have either got possession already, or do not want to have it. The objection is just, but the answer to it is that in those cases the remedy lies elsewhere. Provisions against fraudulent *benami* purchases will be found in other parts of this Act; in this section the object is merely to secure the stamp revenue. Against persons who retransfer after purchase the remedy lies in the Land Registration Act [VII (B.C.) of 1876]. Against those who purchase a diluviated estate in ignorance of the fact, no remedy is necessary; the proper course is to have the estate removed from the rent-roll. A suggestion has been made that the stamp-fee on the certificate shall be treated as part of the purchase-money, but this seems a somewhat arbitrary procedure, and hardly necessary if the provisions now inserted in the Bill prove effectual in inducing all *bonâ fide* purchasers to take the certificate without delay, as it is believed they will.

37. *Section* 51.—In addition to the points mentioned above, which apply to this section in common with section 50, there is another point of some importance. In some instances purchasers have demanded that the Collector shall give them possession by metes and bounds; that is, that he shall ascertain and define for them the actual boundaries of the estate, and place them in actual possession thereof. This is not required by the law, and it is difficult to understand how such an opinion has grown up. The wording of section 29 of Act XI was based on that of the former Code of Civil Procedure, Act VIII of 1859, and has in this Bill by a slight transposition of sentences been made identical with that of the present Civil Procedure Code, sections 318 and 319. It is obvious that the possession to be given to purchasers at a revenue sale was always intended to be similar in kind to that given by a Civil Court, and it might therefore be held that it would suffice to use in this section the same words as those used in the Civil Procedure Code. As, however, doubts have apparently arisen on the subject, a provision has been added limiting the duties of a Collector to giving possession in this way.

38. The question as to the precise meaning of the words "removing any person who refuses to vacate" may be answered in the same way as the preceding one, by saying that the words are to be understood in the same sense as in the corresponding section of the Civil Procedure Code. They do not imply forcible dispossession, but merely that the person in question shall be warned to vacate. Under section 331 of the Civil Procedure Code, the consequences of disobeying such a warning would be liability to a civil suit as well as to prosecution under the Penal Code. It has not been thought necessary to substitute more explicit words in this section, because what is clear enough in one Act is clear enough in another. Should the question arise hereafter, a decision of Government or the Board framed in accordance with the above remarks will probably suffice to set it at rest.

39. *Section* 52.—The words in italics complete the chain of precautions necessary to meet the difficulty raised in the case of *Lala Mobarak Lall* referred to under section 41

This difficulty is more clearly stated in the case of *Balmokoond Lal* versus *Jirjodhun Roy*, 9 I. L. R., Calc., 271. This case is parallel to, and is quoted in the pleadings in Mobarak Lall's case. In this case, after quitting the words of section 8, Bengal Act VII of 1868 (on which the section of the Bill now under notice is based), the Court remarks, "this shows that any omission, informality or irregularity *as regards the serving or posting* of the notification would not be a ground for setting aside the sale, but it does not lay down that *omission to fix the date of sale*, in accordance with the provisions of section 6 of Act XI, would not affect the title of the purchaser." In other words, section 8 of Act VII is insufficient, inasmuch as it is confind to the serving and posting of notices, and does not therefore cure irregularities of other kinds. The insertion of the words "for the period, at the places, and in the manner by this Act required" will, it is believed, supply the omission, the words "for the period" implying that the notice under section 6 has been issued thirty days before the date of sale. For the further quieting of all doubts as to the effect of the certificate and attestation combined, the words "and that the sale to which they refer was a sale under this Act" have been added.

40. *Sections 54 and 55.*—Difficulties have arisen in some districts in respect of the payment of surplus sale proceeds to persons other than the late recorded proprietor, as, for instance, when the late proprietor dies and there is a dispute as to succession among his relatives. In such a case it is often impossible for the Collector to decide who is the proper person to receive the amount, and if he refuses to pay any claimant he becomes liable to a civil suit. These two sections, the procedure of which has been taken from the Land Registration Act VII (B C.) of 1876, sections 48 and 52, have been introduced to meet this difficulty. They give the Collector power to hold an enquiry and either to pay the amount to the claimant or refer the parties to the Civil Court for the settlement of their respective claims. It is further provided on the analogy of section 33 (section 74 of this Bill) that no person who has not presented an objection to the Collector shall at any future time be entitled to claim the surplus sale proceeds. The Collector will thus, it is believed, be protected from having to defend a suit in the Civil Court on a matter in which he is not interested, as under the procedure now proposed it will not be possible for a claimant to include the Collector in any suit he may institute, but only to proceed against the opposite party.

Part V.

41. *Section 56.*—The law at present (section 30 of Act XI) prescribes "that the party who is certified as the proprietor of an estate by purchase under this Act" shall be liable for the revenue from the latest day of payment. The word "certified" evidently alludes to the certificate issued under section 28 of Act XI. But it has been shown in the remarks on section 50 of this Bill, that certificates are not taken out immediately in some cases, and although it has now been proposed to alter the law so as to render the taking of certificates more binding upon purchasers than it is at present, there may still be many cases in which for various reasons the certificate will not be taken out immediately after sale, or at all. It seems therefore advisable to make the purchaser's liability for the Government revenue date from the time when he is declared to be the purchaser, and not to leave it dependent upon his taking out the certificate—a proceeding which it will still be in his power to difer. The wording has therefore been altered to meet this view. The alteration is in accordance with the Full Bench ruling of the High Court in the case of Bhyrub Chunder Banerjea *versus* Soudamini Debya, 2 I. L. R., Calc., page 141, which is rendered applicable to revenue sales by the ruling in the case of Chatraput Singh *versus* Girindra Chandra Roy, 6 I. L. R., Calc., page 389. In the latter case also it was noted that in the present law there is no provision as to the date from which the purchaser may commence to collect rents from tenure-holders and raiyats. Section 55 of Act XI (section 63 of this Bill) provides that the defaulting proprietor may collect rents due up to the latest day of payment, and it follows that the purchaser should be entitled to collect those due after that date, but by some oversight no such provision has been made. This omission has now been remedied by the insertion of the words "and shall be entitled to collect rents from all tenants and raiyats" which may fall due after the latest day of payment.

42. *Section 57.*—In the third section, the words in section 37 of Act XI, "talukdari and other similar tenures," and the words "and held immediately of the proprietors of estates" have been omitted in order to give effect to the extension of the system of common and special registry which will be found fully explained on the remarks on section 64 below.

43. *Section 58*—Has been introduced from Act VII (B.C.) of 1868, section 12. The first, second, and third classes of exceptions being the same as those attached to section 37 of Act XI (section 57 of the Bill), a reference to that section has been substituted for the full text of the exceptions to avoid repetition. In this and the preceding section the words "under-tenants" and "under-tenures," somewhat loosely used, have been replaced by "tenants" and "tenures." The debates in Council on Act XI of 1859 show clearly that the words tenure and under-tenure were at that time used indifferently to mean what in the present state of the law are known as tenures. By the definition in section 3 of the Bill, the term tenures includes under-tenures. The use of the latter term is therefore unnecessary.

44. *Section 60.*—The words in italics have been inserted with reference to the High Court ruling in Monohur Mookerjea *versus* Hurmohun Mookerjea, I. W. R., page 27, in order to make it clear that when separate accounts are opened for shares in an estate, the

residue of the estate for which no separate account has been opened must also be considered as a share and not as an entire estate, with reference more especially to the rights of a purchaser as laid down in this section.

PART VI.

45. *Section* 64.—This is section 38 of Act XI The words "talukdari and other similar tenures created since the time of settlement and held immediately of the proprietors of estates" have been omitted, and the single word "tenures" substituted; also after the words "farms for terms of years" the words "so held" have been omitted. The effect of these changes is to throw open to tenures of all sorts and classes the benefits of the system of common and special registry.

It has long been felt that adequate protection against annulment by a purchaser at a sale for arrears of revenue was not secured to tenures by the sale laws, and various expedients have from time to time been suggested and tried. In the earlier stages of the law the principle prevailed of "holding the estate of a defaulter answerable for the punctual realization of the Government revenue in the state in which it stood at the time the settlement was concluded" (Regulation XI of 1822, section 30). It was therefore prescribed that all tenures should be annulled by a sale for arrears. Consequently the purchaser acquired the estate free of all incumbrances. To prevent, however, the abuse of this principle by zamindars voluntarily causing their estates to be sold in order to get rid of incumbrances created by themselves or their predecessors, Government (section 31 of the Regulation) reserved to itself the power of putting up an estate to sale in the first instance subject to all incumbrances, whenever such a course should be found necessary. In the event of such sale not producing a sufficient amount to cover the arrear, it was not to be confirmed, but a second sale with power to annul incumbrances would take place.

The provisions above mentioned were, it will be seen, made primarily with a view to the security of the Government revenue, and only in a secondary degree took into consideration the protection of the tenants.

46. The law remained virtually unaltered in the subsequent enactments, Act XII of 1841 and Act I of 1845. In the latter Act the exceptions appended to section 37 of Act XI appear, omitting the third. Farms for not more than twenty years were also included in the list of exceptions, as were also lands held by occupancy raiyats. This was the state of the law down to 1859. When Act XI of that year was under discussion, the Government of Bengal proposed a somewhat important change, namely, "that all tenures in an estate, without exception or enquiry, should be allowed to hold good against an auction-purchaser as long as the parent estate should be saleable at a price which would cover the arrears of revenue due from it; but that as soon as the parent estate should fail to be saleable at such a price it should be forfeited to Government and the whole of the past settlement under-tenures should be annulled; whereupon Government should proceed to form a new settlement." The framers of the Bill, on the other hand, proposed a system somewhat similar to that at present in force. The holder of a tenure created since the permanent settlement might apply to the Collector for registration; the Collector should then measure and survey the tenure, and if satisfied that its rent was sufficient to pay its share of the jama of the estate, should register it. The effect of such registration would be to protect the tenure from cancelment under all contingencies. Of those two proposals, that of the Government of Bengal would, if adopted, have probably been more favourable to the tenure-holder than the other, because it granted security complete and absolute without any expense to tenure-holders of all kinds, except in the one event of the estate not realizing at sale a sum sufficient to cover the arrears. Even in this event Government in re-entering on the estate and resettling it would most certainly have respected all existing rights so far as they were consistent with the security of the revenue. The utmost the tenure-holders would have had to fear would be some, perhaps not very large, increase of their rents. Moreover, the constantly increasing value of landed property in Bengal would have a tendency to render more and more rare those instances in which an estate did not realize at a sale enough to pay the arrears of revenue. In practice, therefore, the proposal of the Bengal Government would probably have resulted in the most complete security to tenure-holders. The alternative proposal would also undoubtedly give equal security, but it would be rather heavily purchased, for the expense of the measurement and assessment of a tenure, with the attendant legal expenditure, must always amount to a considerable sum.

47. After protracted discussion, the system at present in force, which represents neither of the above proposals, was adopted. Two classes of registry were introduced, one of which protects talukdari and other similar tenures against all auction-purchasers at a sale except Government; the other protects them against all purchasers including Government. The first class is attended by hardly any expense at all; it is only the second which remains expensive.

The experience of more than thirty years has shown that this system has been absolutely unsuccessful. It gives protection only to tenures created by the proprietors of estates, leaving unprotected all the numerous tenures of the second and lower degrees, such as *dar-patnidars*, *dar-haoladars*, and the like; and it has remained almost entirely a dead-letter, applications for common registry having been very few in number, and those for special registry almost non-existent. The restriction of registry to tenures of the first degree was apparently due to the apprehension expressed by the Government of Bengal that applications for registry would be so numerous that the Collector and his subordinates would be unable to cope with them. This apprehension, as subsequent experience has shown, was groundless.

48 Under these circumstances the Board of Revenue, in 1885, proposed to revive in a modified form the system of double sales prevalent before 1859. But on consideration there were found to be many objections to this proposal. It would undoubtedly be very much opposed by the zamindars, whose interests also must be considered, as it would very seriously affect the price realized by their estates when sold. It would deliver to the auction-purchaser an estate burdened with all sorts of incumbrances, many of which would be probably fictitious or created fraudulently by the defaulting proprietors. In the words of Mr. J. P. Grant, when introducing the Bill, which afterwards became Act XI, "estates might be purchased by persons in ignorance of the fraud, who would ultimately discover that they had bought a losing concern, or a bag of law suits ..... he believed that a general reduction of the value of zamindari properly would be the consequence."

The opinions of many of the experienced officers consulted with reference to the Board's proposal in 1885 were also opposed to the system of double sales, and powerful arguments against it in addition to those mentioned above, which it would take too much space to insert here, were adduced.

49. Turning to the laws in force in other provinces, it appears that in the North-Western Provinces, Act XIX of 1873, section 157, provides that land sold for its own arrears is to be sold free of all incumbrances and contracts made by any one but the purchaser, except farms for less than 20 years and lands leased for houses, and the like. In Assam section 55 of the Land Revenue Regulation, 1886, provides for registry of talukdari or other similar tenures created since the permanent settlement and held direct from the proprietor of an estate; the very words, in fact, of section 37 of Act XI, section 71, and lays down that estates shall be sold free of all incumbrances except tenures held from the permanent settlement and those registered under section 55. It adds, however, one important class, namely, tenures created in good faith at rent not less than the revenue payable in respect of the land. In the Oudh Revenue Act (XII of 1876, land is to be sold free of incumbrances, except those created by the purchasers and leases of land for buildings, &c. But the system of double sales in force under Act I of 1845 is here introduced, the Chief Commissioner having power to declare that any land in arrear may be sold subject to such incumbrances as he may exempt from annulment. A second sale with power to annul incumbrances may take place if the proceeds of the first sale are insufficient to cover the arrear. On the whole, with the partial exception of the Oudh law, the tendency of recent legislature seems to be in favour of selling land free of all incumbrances except such as are of a distinct and well-established nature, the existence of which can give rise to no doubts or dispute.

50. In view of the considerations recited above, the only available resource for, on the one hand, making over an estate to the purchaser free of all incumbrances of doubtful validity and, on the other hand, securing adequate protection to *bonâ fide* tenants of all classes, seems to lie in an extension of the principle of registry. It may indeed be doubted—and this is a view held by several experienced officers—whether there is any practical utility in retaining the costly and always uncertain system of special registry. It must always be exceedingly difficult for any Collector to attain to the certainty that the rents of any tenure are sufficient to meet its proportionate share of the land revenue of the estate; and as purchase of an estate of any real value by Government under section 58 of Act XI in consequence of no bid sufficient to cover the arrears being made, is an event of very rare occurrence, it can hardly be said that there exists any real necessity for giving tenures protection against Government. For the present, however, the provision regarding special registry has been left untouched, as opinions regarding this point have not yet been invited, the question will doubtless receive the attention of Council.

51. In seeking for the reasons which have led to the provisions of Act XI concerning registry remaining to so great an extent inoperative, it may be observed in the first place that the classes to which protection is given by this Act are those who are least in need of it. Tenure-holders of the first grade, those, that is, who hold directly from the zamindar, are usually men of substance and local influence, and though a purchaser has by law the power of ousting them from their tenures, he finds it in practice very difficult to do so, and prefers to make a compromise of some sort with them and leave them undisturbed. The first reason therefore for the neglect of registry by tenure-holders is that they feel themselves sufficiently secure without it.

In the second place the process of registry is expensive. Under Act XI the scale of fees was very high, being 25 per cent., on the rental of tenures or farms not exceeding Rs. 500, 5 per cent on those not exceeding Rs. 1,000, and 1 per cent. on all above that amount.

By Bengal Act III of 1862 the scale of fees was lowered to 5 per cent. on the rental of tenures or farms up to Rs. 1,000, and 1 per cent on all above that amount. Even this, however, seems high, and the reduction of the rate which affects only the smaller tenures has not had the effect of inducing tenure-holders to register more freely than before

Thirdly, section 45 of Act XI, as it originally stood, required that tenures then existing should be registered within three years of the passing of the Act, and tenures created subsequently within three months of their creation. By Bengal Act III of 1862 the time for registering tenures existing at the time of the passing of Act XI was extended to three years from the passing of Act III of 1862, that for registry of tenures created between the passing of Act XI, and that of Act III to three months from the latter date, and all tenures created subsequently to three months from the date of creation. At present therefore no old tenures, but only those created within the last three months, can be registered. The vast majority

of tenures are thus excluded from the protection afforded by the law, and that too in most cases not from the *laches* of the present holders, but that of their predecessors.

52. To carry out therefore effectually the extension of the system of common registry and, if it should still be thought worth while, of special registry also, it is necessary, *first*, to remove from the text of the Act all words limiting or defining tenures or under-tenures; *secondly*, to abolish the limitation as to the time within which tenures can be registered; and, *thirdly*, to reduce the fees for registry to a moderate amount. Thus all tenures of every grade and kind will be susceptible of being registered at any time, and at a cost, excepting special registry, which is within the means of the poorest. If after this tenure-holders still do not protect themselves by registry, they will be without excuse, as the law gives them every facility for so doing.

53. *Section* 66.—In the *sixth* particular appended to this section, the words in italics have been added to guard against the abuse of the extended system of registry by applications being made for registry of invalid tenures; either the deed constituting the tenure must be produced, or if, as sometimes happens, the deed has been lost, proof that the tenure has been in existence for the period of twelve years fixed by Article 121, Schedule II of the Limitation Act. It has also been prescribed that such deed or proof shall be submitted for the Collector's inspection, and in section 67 it is further provided that the Collector shall consider such proof and grant or refuse registry according as he is satisfied or not. These provisions, it is believed, will effectually guard against fraudulent registry of unauthorized tenures. The mere issue of a notice to the proprietors, a procedure which might have been sufficient when only the greater tenures could be registered, will hardly be of any use now, as a zamindar would probably be unable or unwilling to contest every petty case that may now arise.

54. *Section* 71—Has been introduced from the Partition Act [Act VIII (B. C.) of 1876], as the matter to which it refers seems more appropriate to this Bill.

55. *Section* 75.—This section gives effect to the general extension of the system of registry by enabling tenures to be registered at any time, provided the deeds constituting them (when there are any) have been properly registered under the Indian Registration Act of 1877.

Part VII.

56. Calls for no remarks. No changes have been made in this part of the law.

Part VIII.

57. *Section* 82.—This has been introduced from Act VII (B.C.) of 1868. The wording has been slightly amplified, and a necessary explanation added from section 78 of the Civil Procedure Code.

58. *Section* 83.—Section 49 of Act XI contained merely a general provision that the subordinate revenue authorities should act in accordance with instructions received from the superior revenue authorities in respect of the registration of tenures. But this seems hardly in accordance with the more accurate instructions common in recent legislation. It was also to a certain extent superfluous, as the subordination of officers of lower rank to those above them is a general principle hardly needing to be specifically enunciated. Definite provisions regarding appeals have therefore been substituted, and power has been given to the Collector to refer cases for decision to his subordinates. The latter part of section 49 relating to revision of Commissioner's orders in special registry cases has been put into a separate section (section 84 of the Bill).

59. *Section* 89.—This is section 9 of Act VII (B. C.) of 1868. It has been inserted provisionally at the end of this Bill, as it is very doubtful whether it is necessary to retain it at all. It is a section to remove doubts as to the validity of certain sales off lakhiraj tenures which appear at some time or other to have been held under Act XI. The circumstances under which such sales were held cannot now be traced, and it is not probable that any such sales would be held in the present day. The repeal of this section would not re-open the question, should any such arise, of the validity of past sales, as such action is provided against in section 2 of this Bill. It would seem therefore that the section might fairly be treated as obsolete. The subject, however, deserves consideration.

John Beames, C. S.,
On Special Duty.

A

DRAFT BILL

TO

Amend the Public Demands Recovery Act, 1880.

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A

DRAFT BILL

TO

Amend the Public Demands Recovery Act, 1880.

Preamble.

WHEREAS it is expedient to amend the law for the recovery of dues and debts demandable by Public Officers: It is hereby enacted as follows:—

Act VII (B.C.) of 1880, section 1.

Short title.

1. This Act may be called "The Public Demands Recovery Act, 189 ."

Extent.

It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

It shall come into operation on and after the date on which it shall be published in the *Calcutta Gazette* with the assent of the Governor-General.

Ditto ditto, section 2.

Construction of this Act.

2. The powers given by this Act shall be deemed to be in addition to and not in derogation of, any powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

Ditto ditto, section 3.

Repeal of Act in Schedule.

3. Bengal Act VII of 1880 is hereby repealed from and after the commencement of this Act: provided that this repeal shall not affect—

(*a*) the past operation of the Act hereby repealed, nor anything duly done or suffered thereunder:

(*b*) any liability created under the Act hereby repealed.

Certificate under Bengal Act VII of 1880 to be enforced under this Act.

Every certificate made under the provisions hereby repealed of Bengal Act VII of 1880 may be enforced under the provisions of this Act.

Ditto ditto, section 4.

Definitions.

4. In this Act, unless the context otherwise requires:

"Section."

"Section" means a section of this Act.

"Collector of the District."

"*Collector of the District*" *means the officer in charge of the revenue administration of a district.*

New,
See Act IX (B.C.) of 1880, section 4.

"Collector."

"Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (*b*) without those limits, the Collector of a district; *and includes, subject to the provisions of section* 30, any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector under this Act, and any officer in charge of a subdivision of a district whom the Collector of such district, with the sanction of the Commissioner, authorizes to perform such functions as aforesaid.

New.

"Bengal Act" means an Act passed by the Lieutenant-Governor of Bengal in Council.

5. In the following cases, that is to say— Act VII (B C) of 1890, section 5

When an estate or tenure has been sold for its own arrears, and the sale-proceeds are insufficient to liquidate the same, or

(1) when, under the provisions of the "*Revenue Sale Act*, 189 ," *or any law for the time being in force*, an estate, *share of an estate or independent* tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may, under the aforesaid provisions, be applied;

When arrears of revenue due from a farmer are not paid on latest date of payment;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section 6 of the "Revenue Sale Act, 1890";

The Collector may make a certificate.

the Collector may make under his hand, and in Form No. 1 in the Schedule annexed to this Act, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

6. (*a*) Subject to the provisions of this Act, every certificate made under the provisions of section 5 shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor. Ditto ditto, section 6

Such certificate shall have the force and effect of a Civil Court decree as regards the remedies for enforcing it.

(*b*) Such judgment-debtor may, at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the Civil Court to have the said certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section 12, then within fifteen days after such petition has been heard and determined.

Judgment debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the certificate.

(*c*) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a Civil Court.

Certificate when to become absolute.

7. When any arrears of the following public demands are unpaid by the person liable to pay the same, that is to say— Ditto ditto section 7

When any arrear of a public demand is unpaid by the person liable to pay the same

(1) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or

by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue:

(2) any sum of money due from the surties of a farmer in respect of the revenue of the estate farmed by him:

(3) any such demand, money, fee, duty, arrear, fine, or costs as is mentioned in the following sections of the following Bengal Acts, that is to say—

Act VIII of 1862, Section 9;
Act IV of 1875, Section 1;
Act V of 1875, Section 57;
Act III of 1876, Section 42, Section 73, and Section 85;
Act VII of 1876, Section 82;
Act VII of 1876, Section 138;
Act VIII of 1876, Section 36;
Act IX of 1879, *Sections* 46, 58*A*, 63, *and* 65*A*;
New Act VI of 1880, *Sections* 26, *clause* 4, *and* 38;
Act IX of 1880, *Sections* 49 *and* 98;
Act II of 1882, *Section* 70;
Act I of 1885, *Section* 12;

or in the following sections and portions of the following Acts passed by the Governor-General in Council, that is to say—

Act VII of 1870, "The Court Fees' Act," sections 19G, 19H, and the note to paragraph 12 of Schedule I;
Act XIX of 1883, *Section* 7;
Act XII of 1884, *Section* 70;
Act VIII of 1885, *Section* 114:

(4) in the case of a person to whom the collection of tolls has been farmed under the provisions of Section 8 of Bengal Act V of 1864, or of the surties of such person—any sum of money due in respect of such farm:

(5) any arrears of revenue or rent payable to the Secretary of State for India in Council from any raiyat or from any person holding any interest in land, pasturage, forests rights fisheries, and the like, whether such interest is or is not transferable

(6) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent, whether such arrears become due before or after the management devolved upon such Court or such authorities:

Provided that this clause shall not apply to any arrears of rent at an enchanced rate, unless such enchancement has been made—

by contract under the provisions of section 29 *of the Bengal Tenancy Act*, 1885, *or*
by decree of Court under the provisions of section 31, 32, 33 *or* 34 *of the said A, or*
by registered or other agreement under the provisions of section 43 *or* 46 *of the said Act.*

(7) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act:

(8) any fee, duty, tax, or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

the Collector may make under his hand, and in form No. 2 in the Schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office: provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

The Collector may make a certificate of the unpaid demand.

Act VII (B. C.) of 1880, of section 8, first clause.

8. (*a*) Subject to the provisions of this Act, every certificate made under the provisions of section 7 shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than case (6) mentioned in the said section 7, the Secretary of State for India in Council, and in the said case (6) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

Effect of certificate.

New, adapted from Bengal Act IX of 1880 section 49

(*b*) *When a certificate has been made under the provisions of section* 16 *of the "Revenue Sale Act,* 189 ,"' *the person on whose application the certificate has been made shall be deemed to be the decree-holder, and all proceedings taken by the Collector under this Act shall be taken at the instance, at the cost. and on the responsibility of such decree-holder and not otherwise.*

Act VII (B C.) of 1880, section 9.

9. (*a*) When any arrear of any of the public demands specified in section 7 is unpaid by any person liable to pay such public demand to a Public Officer other than a Collector, or when any such demand as is specified in clause (6) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may make to the Collector of the district, in which such person resides, or in which such demand is payable, or (*if the Collector of the direct shall so direct*) *to a Collector, a requisition* in writing in Form No 3 in the Schedule annexed to this Act: provided that no such *requisition* may be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

In case of arrears of public demand payable to Officer other thad Collector, such Officer may make requisition to Collector.

(*b*) Every such *requisition* given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in repect thereof a court-fee of the same amount as is payable under the Court-fees Act for the time being in force in respect of a plaint for the

Such requisition given by a Manager to be verified and stamped as a plaint

recovery of a sum of money equal so that stated in such note.

(c) On receipt of such *requisition* such Collector, if satisfied that such demand is justly recoverable, may make under his hand, and in the form No. 2 in the Schedule annexed to this Act, a certificate of the amount of such arrears so remaining unpaid, *together with the cost of any court-fee paid in respect of any requisition under the last preceding clause*, and shall cause the same to be filed in his office.

Collector may on receipt of such requisition make a certificate.

(d) The provisions of section 8 shall apply to every such certificate.

Act VII (B C.) of 1880, section 10

10. When a certificate has been filed in the office of a Collector under the provisions of section 5 or section 7, or section 9, such Collector shall issue to the judgment-debtor a copy of such certificate and a notice in form No. 4 in the Schedule annexed to this Act. From and after the service of such notice, such certificate shall bind all immoveable property of such judgment-debtor situate within the jurisdiction of such Collector in the same manner, and with like effect as if such immoveable property had been attached under the provisions of section 274 of the Code of Civil Procedure. A copy of such certificate may be transmitted by post under the provisions of section 223 of the Code of Civil Procedure to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such certificate shall, if the aforesaid notice has been served, bind in like manner all immoveable property of such judgment-debtor situate within the jurisdiction of such last-mentioned Collector.

When certificate filed, notice to be given to judgment-debtor. Upon service of notice, certificate to bind immoveable property of judgment-debtor.

Copy of certificate may be sent to Collector of another district to be filed in his office; and upon its being filed, it shall bind immoveable property situate in such district.

Ditto ditto, section 11.

11. If in any case other than the case mentioned in clause (6) of section 7, the Collector is satisfied that any person against whom a certificate has been filed under the provisions of section 5, or section 7, or section 9, is likely to conceal, or remove, or dispose of the whole or any part of his moveable property, and that the realization of the amount of such certificate will in consequence be delayed or obstructed, he may at any time after making such certificate direct an attachment of the whole or any part of the moveable property of such person. Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching moveable property, and subject to the provisions of section 266 of the same Code. Such property may be sold for the purpose of satisfying such certificate, if no petition of objection is filed under section 12, or if any such petition is filed, then as soon as it has been heard and determined.

Moveable property of person against whom certificate has been made may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

Ditto ditto, section 12.

12. If *a judgment-debtor* who has been served with a notice under section 10 denies his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, he may at any time within thirty days after service of such notice or, where no such notice has been duly served, within thirty days after the

Any person served with notice under section 10 may file a petition of objection.

execution of any process for enforcing such certificate, file a petition denying his liability as aforesaid, before the Collector by whom such certificate has been made. Such petition shall be in, or as nearly as possible in, the form No 5 in the Schedule annexed to this Act.

Act VII (B. C.) of 1880, section 13.

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner. Certain provisions of the Code of Civil Procedure to apply to the inquiry.

13. Such Collector shall fix a day for hearing any such petition so filed, and upon such day, or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such certificate was made, and may set aside or modify or vary the certificate accordingly. Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers.

Ditto, section 14.

Collector may award costs against petitioner.

Such costs how to be realized.

14. The *Collector shall* have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner, and in any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall be added to the amount entered in the certificate, and shall be recoverable as if the same had been originally entered therein.

Ditto, [section 8 (*b*), first part.

Judgment-debtor may bring a suit in the Civil Court to contest the certificate.

15. *The person deemed to be the judgment-debtor under the provisions of section* 8 may at any time within one year after the service upon him of such notice as is mentioned in section 10, bring a suit in the Civil Court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled, but no such suit shall be entertained unless such judgment debtor has stated in a petition presented to the Collector under section 12 the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission. If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Certificate when absolute.

Ditto, section 8 (*b*), second part.

16. No certificate duly made under the provisions of this Act shall be cancelled by a Civil Court, otherwise than on one or more of the following grounds, that is to say—

(1) that the amount stated in the certificate was actually paid or discharged before the making of such certificate:

(2) in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a

Grounds of cancelment of certificate by Civil Court.

Public Officer under the provisions of any Regulation or Act for the time being in force—that the proceedings of such Collector or Public Officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the certificate suffered substantial injury from some error, defect or irregularity in such proceedings:

(3) in cases other than those mentioned in clause (2)—that the amount stated in the certificate was not due by the judgment-debtor under the certificate:

(4) want of jurisdiction.

Nothing in this proviso shall be constructed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

Act VII (B C.), 1880 section 15

Collector may refer petition for hearing to Deputy Collector, &c

17. The Collector of a district may, *by a general or special order*, refer to any *Assistant Collector*, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any petition or petitions filed under section 12, and such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petitions accordingly. The provisions of sections 13 and 14 shall be applicable to any such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner to whom any such petitions have been so referred.

Ditto, section 16.

New.

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner. Stay of execution.

18. An appeal from any order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector *of the district or to a Collector* within fifteen days, and an appeal from any original order of a Collector may be preferred to the Commissioner within thirty days after the making of such order respectively. Pending the decision of such appeal, execution may be stayed if the Appellate Authority so direct, but not otherwise:

Provided that, when the Lieutenant-Governor shall so direct, appeals from the orders of a Collector who is not the Collector of the district may be preferred to the Collector of the district. Such appeals shall be preferred within fifteen days after the making of such order.

Ditto, section 17

Power of revision.

19. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner; but the Commissioner *and the Collector of the district* (*if so empowered by the Lieutenant-Governor*) may in any case in which they think fit revise any order passed by a Collector, Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner.

Act VII (B C.) of 1880, section 18

Certificate may be enforced after one month from notice, or when petition of objection disposed o

20. Every certificate made under the provisions of section 5, or section 7, or section 9, may be enforced and executed *with interest and costs* upon the expiry of one month after service of the notice mentioned in section 10, or when any such petition as is mentioned in section 12 has been filed, then as soon as such petition has been heard and determined.

Ditto, section 19 clause 1.

Certificate may be enforced under the provisions of the Code of Civil procedure as a decree for money.

21. Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money.

And all the practice and procedure provided by the *hereinafter specified sections of the* said Code of Civil Procedure shall apply to every execution issued to enforce such certificate and realize the amount recoverable thereunder, namely—

Re arranged and expanded

(1) *sections* 223, 224, 225, 226 *and* 228 *concerning the execution of decrees out of the jurisdiction of the court by which they were passed*;

(2) *sections* 266, 267, 269, 271, 274 *and* 284 *concerning attachment of property*;

(3) *sections* 278, 279, 280, 281 *and* 283 *concerning claims to attached property*;

(4) *sections* 286, 287, 288, 289, 290, 291, 292 *and* 293 *concerning sales in execution of decrees*;

(5) *sections* 297, 298 299, 300 *concerning sale and delivery of moveable property*;

(6) *sections* 306, 307, 308, 309, 314, 316 317, 318 *and* 319 *concerning sale and delivery of immoveable property*;

(7) *sections* 311, 312, 313, *and* 315 *concerning applications to set aside sales*;

(8) *sections* 320, 321, 322, 322*B.*, 322*C.*, 322*D.*, 323, 324, 324*A.*, 325, 325*A.*, 325*B.*, 325*C*, 326 *and* 327 *concerning the transfer to the Collector of the execution of certain decrees and the procedure to be followed in such cases*;

(9) *sections* 328, 329, 330, 331, 332, 333, 334 *and* 335 *concerning resistance to execution*;

(10) *sections* 336, 337, 337*A.*, 338, 339, 340, 341, 342 *and* 343 *concerning arrest and imprisonment*;

(11) *the whole of the sections contained in chapter XX concerning insolvent judgment-debtors*;

(12) *section* 588, *clauses* (16) *and* (17), *concerning appeals from orders.*

Act VII (B. C) of 1880, section 19, clause 2

Powers by whom to be exercised.

22. (*a*) In enforcing and executing such certificate, all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such certificate, or any copy thereof transmitted for execution under the provisions of section 223 of the said Code has been filed.

New.

(*b*) *The power conferred on the High Court of making rules for the guidance of the Courts in the exercise of their duties under section* 287 *of the Civil Procedure Code, shall in respect of proceedings under this Act, be exercised by the Board of Revenue. All such rules shall be published in the "Calcutta Gazette" and shall thereupon have the force of law.*

Act VII (B.C.) of 1880 section 19, clause 3.

(c) Subject to the control of the Collector the district, and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers, and authorities may be exercised by any Assistant Collector, Deputy Collector, Assistant Commissioner or extra Assistant Commissioner subordinate to such Collector.

Ditto, section 20.

Sale of immoveable property may be set aside, if certificate is set aside by a competent Court. Proviso.

23. If any immoveable property is sold in execution of a certificate under the provisions of section 18, and if such certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immoveable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit: provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

Ditto, section 21.

Register of certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

24. Every Collector shall cause to be kept in his office a register in such form as may from time to time be prescribed by the Board of Revenue, and shall cause to be entered in such register the particulars of every certificate made under this Act, which, or a copy of which, has been filed in his office. Such register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Ditto, section 22 (a).

Payment of sum due under a certificate may be made by instalments. Payment by instalments to be entered in register.

25. Payment of the amount due under a certificate may be made by instalments, if the Collector who made such certificate so direct. The payment of any instalment shall be entered in the register mentioned in section 24.

Ditto, section 22 (b).

When total amount satisfied Collector to enter satisfaction on certificate and register.

26. When the total amount due under a certificate has been paid and satisfied, the Collector in whose office such certificate was originally filed, shall enter satisfaction upon such certificate under his hand and signature; and shall cause the same to be entered in the register mentioned in section 24.

Ditto, section 2 (c).

Collector to communicate satisfaction to other Collector in whose office copy of such certificate has been filed.

27. When a copy of such certificate has been transmitted to another Collector, or when such certificate has been made under the provisions of section 9 upon notice from a Public Officer other than a Collector or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector, or to such officer, or to such Manager.

Ditto, section 22 (d).

Sum levied by Collector to whom copy of certificate sent to be transmitted to Collector who made certificate.

28. When a sum has been levied or received by a Collector in respect of a certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such certificate was originally made.

Act VII(B. C.) of 1880, section 23.

Certain officers to be deemed to be acting judicially in the discharge of their duties under this Act.

29. Every *Collector of a district*, Collector, Assistant Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner, and every such Public Officer is as mentioned in section 9 shall in the discharge of his function under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850 passed by the Governor-General in Council.

Ditto section 24

Collectors, *&c.*, to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

30. All *Collectors of districts*, Collectors, Assistant Collectors, Deputy Collectors, Assistant Commissioners, and Extra Assistant Commissioners shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue; and no officer, although specially appointed to perform the functions of a Collector under this Act, shall exercise the appellate powers of a Collector under section 18 of this Act, unless he is expressly authorized in that behalf by the said order of the Lieutenant Governor; and, unless the contrary shall be expressly directed in such order, every officer so specially appointed shall exercise his subject functions to the control of the Collector of the district.

Board's Certificate Procedure Manual, section II, rule 12.

New.

Provisions regarding service of notices.

31. *The provisions of sections* 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84 *and* 85 *of the Code of Civil Procedure shall be applicable, so far as circumstances permit, to the service of all notices issued under this Act.*

SCHEDULE.

Form No. 1 (*See* Section 5).

Certificate of Arrears of Revenue filed in the Office of the Collector of the District of (name of District).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of arrears of revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which arrears of revenue are due.
1	2	3	4	5

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council from the abovenamed.

Dated this day of 18 . A. B.,

Collector of

FORM No. 2 (*See* Sections 7 and 9).

Certificate of Arrears of Public Demands filed in the Office of the Collector of the District of (name of District).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made, and Public Officer [or manager, and of what estate] to whom due.
1	2	3	4	5

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council [*or* to A. B., a Ward of Court, *or* a Minor, *or* a Lunatic, by his next friend C. D.] from the above named.

Dated this day of 18 . A. B.,
Collector of

FORM No. 3 (*See* Section 9.)

REQUISITION.

To the Collector of the District of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this requisition is made.	Nature of the Public Demand for which this requisition is made.
1	2	3	4

The above sum of Rs. is due from the said
in respect of
Certified this day of

A. B.

(*Official designation.*)

FORM No. 4 (*See* Section 10.)

NOTICE.

To (*Insert name of judgment-debtor.*)

You are hereby informed that a certificate for Rs. due from you on account of has been this day made by me against you under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, and that such certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. , you may within thirty days show cause why

such certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. , unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immoveable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the certificate abovementioned is hereto annexed.

Dated this *day of* 18 . A. B.,
Collector of

FORM No. 5 (*See* Section 12).

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (*name of petitioner*) of (*address*).

SHEWYTH—

That a Certificate, No. , for the sum of Rs. , has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons:—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said Certificate may be set aside (*or* modified *or* varied).

Bill to amend the Public Demands Recovery Act, 1880.

STATEMENT OF OBJECTS AND REASONS.

1. Act VI (B.C.) of 1880 was intended to be read as one with Act XI of 1859, the law for the sale of estates for arrears of revenue. Section 2 of the former Act prescribes that "this Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859 passed by the Governor-General in Council and Act VII of 1868 passed by the Lieutenant-Governor of Bengal in Council." This arrangement, though in accordance with the state of the law since 1868, has been found to give rise to serious practical inconveniences. Before 1868 sums due to Government by individuals could only be realized in the same manner as an arrear of land revenue, that is, by the sale of the defaulter's estate, or by the still more tedious and expensive process of a civil suit. When a more summary procedure for the realization of such dues was introduced in 1868, it was treated as supplementary to the old procedure and the two systems continued, and still to a certain extent continue, to be mixed up together. But now that the certificate procedure has been in force for upwards of twenty years, and all classes of the population are familiar with it, it has become possible, and will be extremely advantageous, to separate the two processes, which have in fact nothing in common, and have probably been kept in a state of relation to one another more from the influence of association than for any more valid reason. A separate Bill has accordingly been prepared for the amendment of the sale law, and the present Bill is intended similiarly to amend the certificate law. The two processes, that by which the land revenue due from the proprietors of estates is realized, and that by which a great number of minor demands—fees, fines, duties, taxes, costs and the like—are recovered from the public in general, will henceforth stand apart from, and independent of, each other, each having its own statute and its own procedure.

2. In addition to this reason for amending the present Act there are also complications caused by the peculiar wording of certain sections, and ommissions to provide for certain necessary contingencies. Recently also a decision of the High Court, which will be fully discussed later on, has put upon one section of the Act an interpretation which it was undoubtedly not intended to bear, and which seriously affects the successful working of the law. The alterations made by the present Bill will now be explained in detail.

3. *Section* 2.—As above explained, the words by which Act VII (B.C.) of 1880 was directed to be construed as one with Act XI of 1859 and Act VII (B.C.) of 1868, have been omitted. The provisions necessary for making the certificate procedure independent and self-contained have been inserted in various sections of the Bill. The provisions, however, that the powers given by the Act are to be deemed to be in addition to the powers conferred by any Act now in force, has been retained. The certificate procedure is now applicable to so many Acts that the removal of this provision might cause some confusion in the proceedings of various departments; and though it is not likely that it will often have any practical significance, it will be on the whole safer to retain it.

4. *Section* 4.—Very great difficulty has been caused by the vagueness of the definition of "Collector" in this section. Two classes of officers are referred to in the Act, the Collector of the district and the Collector, but no definition of the former is given. In section 7 of the Act the power of issuing certificates is given to the Collector of the district, and this was at first held to imply that this power could not be exercised by any one but the Collector-Magistrate, the officer at the head of the revenue administration of a district. Seeing that in most districts many thousands of certificates are issued every year, it would be practically impossible for the District Collector himself to issue them all; and though the Government has, in consequence of the great increase of work, invested numerous Deputy Collectors with the powers of a Collector under the Act, yet a strict interpretation of the words of section 7 would seem to indicate that none of these officers can issue certificates under that section. On the other hand, certificates under section 5 can apparently be issued by any officer invested with the powers of a Collector. The Act itself affords no explanation of this inconsistancy. It appears also that only the District Collector can refer petitions for enquiry to Deputy Collectors under section 15, while in section 19 a Deputy Collector can exercise powers subject to the control, not, as might be expected, of the Collector of the district, but of the Collector.

5. The conclusion as to the powers caused by this defective wording of the Act was removed by an ingenious opinion given by the Hon'ble the Advocate-General in 1882. In this opinion it was pointed out that in section 4 (*b*) Collector means the Collector of the district or any officer specially appointed by the Lieutenant-Governor to perform the functions of a Collector. Any officer so specially appointed is therefore a Collector, and as a Collector is a Collector of the district, any officer specially appointed is a Collector of the district and can issue certificates under section 7." The Advocate-General, though holding that the above results naturally flowed from the section as worded, expressed a doubt (which will be shared by most officers) whether this result was intended by the framers of the law. And in fact if the view first held that none but the actual Collector of the district could issue certificates under section 7, did not

go far enough, the view propounded by the Hon'ble Advocate-General goes too far. It was obviously intended, on the analogy of many other Acts referring to the administration of various revenue departments, that while power to transact the ordinary business of the certificate system should be conferred on Deputy Collectors and other similiar officers, the general direction, control and supervision of this, as of all other departments, should rest solely with the Collector of the district. But by the Advocate-General's opinion subordinate officers are not only admitted to the power of conducting ordinary business, but they are invested with full powers of control and are rendered independent of the Collector, to whom in this as in all other matters they should properly be subordinate. The opinion therefore removes one difficulty only to introduce another.

6. Owing to the peculiar arrangement of section 4 (*b*) it is very difficult to make such alterations as will establish a clear distinction between the supervising and controlling "Collector of the district" and the "Collector," a subordinate officer empowered to perform judicial and executive functions, but not to usurp the authority of the head of the district, while the latter still retains power to perform all the functions of a "Collector" under the Act, whenever for any reason it may seem fit to him to do so.

7. The steps taken to solve this perplexing problem are these. A definition of "Collector of the district" has been introduced, taken from the Cess Act. Then in clause (*b*), instead of saying that "Collector" means "Collector of the district *or* any officer, &c.," a phrase which puts the two classes of officers on a level, the words "and includes, subject to the provisions of section 30, any officer, &c," have been introduced. Section 30, taken from the Board's Rules relating to the certificate procedure, provides that every officer empowered under the Act shall exercise his functions subject to the control of the Collector of the district. The word "Collector" has been substituted for "Collector of the district" in section 7, and similiar corrections have been made, where necessary, in other sections of the Bill. It is hoped that these alterations, should they become law, will remove the uncertainty heitherto prevailing on this point, and admit of the general employment of Deputy Collectors and other subordinate officers in performing the ordinary business of certificate cases without destroying the control of the District Collector.

8. *Section* 7, *Clause* 3.—The list of Acts to which the certificate procedure is applicable has been brought up to date by the addition of the India Council and Bengal Council Acts passed since 1880. Among these is the Ferry Act (Bengal Act I of 1885), the insertion of which in clause (3) renders necessary the cancelment of clause (5) of the Act, which referred to the old law on ferries, Regulation VI of 1819, now repealed.

The proviso at the end of clause (7)—clause (6) of the Bill—has been remodelled to bring it into accordance with the provisions of the Bengal Tenancy Act of 1885, which has rendered the law on the subject of enchancement more definite than it was at the time when the Public Demands Act was framed.

9. *Section* 8—A clause (*b*) has been added to give effect to the proposed application of the certificate procedure to the case of joint proprietors of an estate who, to save the estate from sale may have paid up the whole amount of revenue in arrears. A provision allowing such persons to apply to the Collector to recover the excess payments from their co-sharers by certificate, has been inserted in the Revenue Sales Bill now before Government, and this clause is necessary to complete the procedure.

10. *Section* 9 (*a*).—The word "notice" applied in the Act to the communication addressed by a public officer or a Court of Ward's Manager to the Collector, has been replaced by the word "requisition" The word "notice" is used for those documents by which a Collector gives information to, or makes any demand upon, the public, and the use of this word for an entirely different purpose is calculated to give rise to confusion. The word "requisition" seems a more appropriate designation for the communication dealt with in this and the following sections.

11. In this section the difficulty above discussed about "Collector" and "Collector of the district" occurs again. It may be in some cases desirable that the Manager's requisition should be addressed to the Collector of the district, as that officer is responsible for the proper management of the Ward's estate, but their are many instances where the Collector for good and sufficient reasons, and with the sanction of superior authority, has made over the supervision of some particuliar Ward's estate to a Deputy Collector, and in such cases it is not necessary that the requisition should be addressed to the Collector. The words in italics have therefore been introduced to enable the Collector of the district to arrange for the submission of requisitions to the Collector, that is, to the officer empowered under the Act, the "certificate officer" as he is usually called. This officer will under clause (*c*) satisfy himself that the demand is justly recoverable. In cases other than Ward's estates also it will often be convenient that requisitions should be presented to the certificate officer direct.

12. *Section* 9 (*c*).—The words in italics have been inserted to facilitate the recovery from a defaulter of the costs of the court-fees required to be paid by a Manager under clause (*b*) of this section. Suggestions to this effect have been made by the Board to Government on previous occasions, and so far back as 1881 Government consulted the Board on the subject of a draft Bill containing the provision now inserted, but action was deferred till a revision of the whole Act should be undertaken. The present seems therefore a proper oppurtunity to give effect to them.

13. *Section* 15.—This consists of the first part of clause (*b*) of section 8 of the Act, which has been removed to this place as coming more appropriately in the order of events after and not before the proceedings on objection. This transposition of the section has necessitated a slight alteration in the opening words of the section.

14. *Section* 16.—This is the remaining portion of clause (*b*) of section 8, which follows in natural sequence in this place.

15. *Section*. 17.—Section 15 of the Act. This is one of the instances referred to above, in which alteration is necessary to remove the confusion existing in the Act between "Collector" and "Collector of the district." The officer referred to in this section is clearly the Collector of the district, who is the only officer to whom the Assistant and Deputy Collectors mentioned in the section can be said to be "subordinate." When a Deputy Collector is vested with the powers of a Collector under this Act, it cannot be said that all the other Deputy and Assistant Collectors in the district become subordinate to him, and it would give rise to much confusion and inconvenience if he were allowed to refer as many objection petitions as he pleased to his fellow Deputies for decision. This power of reference should be restricted to the Collector who, as the head of the district, is responsible for the due despatch of public business, and must therefore have the power of distributing work among his various subordinates, so that all shall be fully occupied and none overburdened. It would upset the Collector's arrangements for the distribution of work if a Deputy Collector exercising the powers of Collector under the Act, were able to throw upon any officer a number of objection cases whenever he pleased. The word "Collector" has therefore been altered to "Collector of the district." At the same time to avoid the necessity for the District Collector passing an order of reference on each case which would be onerous, and to provide against delay being caused by the Collector being out in camp, and the like, the words "by a general or special order" have been inserted. This will enable a Collector to distribute the objections in groups or classes among his subordinates. Thus one officer might be empowered to take up objections in Ward's cases, another in Irrigation, a third in Cess cases, and so on.

16. *Section* 18.—The proviso to this section (section 16 of the Act) has been added to meet the case of a certain subdivision where, owing to the existence of a large Government estate, the certificate work is unusually heavy. The Subdivisional Officer is vested with the powers of a Collector under this Act, and as the law now stands, appeals from his orders would be to the Collector. But it has been suggested that it inflicts some hardships upon the raiyats to compel them to go to the Commissioner's head-quarters to prefer their appeals, and that as the Collector of the district is the immediate superior of the Subdivisional Officer, he is the natural appellate authority in such cases. As there may be other instances of this kind in other parts of Bengal, the provision has been made generally applicable. The distinction between "Collector of the district" and "Collector" has been inserted in this section in such a way as to allow of appeals being heard by a "Collector" when such a course may be convenient, and with reference to the new part of section 30 below.

17. *Section* 19.—The words in italics have been inserted for the reasons given in section 18 above.

18. *Section* 20.—The sums entered in certificates are such as in many cases legally bear interest, and it seems equitable that this interest, as in the case of a civil court decree, together with the costs of execution, should be leviable together with the principal sum.. The words "with interest and costs" have therefore been inserted.

19. *Section* 21.—This is the most important section in the Act (section 19), and the one which has given rise to most controversy. The principal difficulties have reference to the interpretation of the clause which specifies those parts of the Civil Procedure Code which are applicable to this Act. This clause was taken with a few alterations from Act VII (B. C.) of 1868. The Civil Procedure Code in force when the Act of 1868 was passed, was Act VIII of 1859, but by the time that the present Act came to be passed this had been superseded by Act X of 1877, which in its turn was not long after replaced by Act XIV of 1882, so that the specification of the various parts of the Code applicable to certificates no longer corresponded to the arrangement of the actual Code. This was particularly the case with the first item in the clause, which runs "in respect of sales in execution of decrees." This expression, though defining with sufficient accuracy the subject as it stood in Act VIII of 1859, fails when applied to the present Civil Procedure Code, Act XIV of 1882, in which there is no one chapter so headed. The other items in the clause also do not very accurately correspond to the headings of the present Code, and there is thus considerable room for doubting which sections of the Code do, and which do not, apply to certificate cases.

20. In the first item mentioned above this vagueness of expression has led to a serious practical difficulty. It had for a long time been held by the Board, supported by the legal advisers of Government, that sections 311 and 312 of the Civil Procedure Code were applicable to sales of immoveable property in execution of a certificate. A circular was issued by the Board to this effect in August 1883, in which it was laid down that "the rules prescribed by section 311 *et seq* of the Civil Procedure Code come strictly within the terms 'practice and procedure' used in section 19 of the Act," and that therefore those sections are applicable to cases of sale under the Public Demands Recovery Act. The effect of this instruction is that a person desiring to set aside a sale under the above Act, would have to apply under section 311 to the Court which held the sale to set it aside on the ground of a material irregularity causing substantial injury to the applicant, and that the Court, if allowing the objection, might set aside the sale under section 312, or, if the objection be not allowed, might refuse to do so. Under section 588, clause 16, an appeal would lie from such orders.

21. The procedure thus indicated remained in force till 1886, when, in the case of *Sadhusaran Singh* versus *Panchdeo Lall and others*, 14 I. L. R., Cal., p. 1, the High Court held a

different view. The portion of the judgment relevant to the present subject is as follows:— "Supposing there are material irregularities in publishing or conducting a sale held in execution of a certificate issued under Bengal Act VII of 1880, and supposing such irregularities have caused substantial injury to the owner of the property sold, what are his remedies? .....Section 19 of Bengal Act VII of 1880 says that all the practice and procedure provided by the Code of Civil Procedure in respect of sales in execution of decree, &c., &c., shall apply to every execution issued to enforce a certificate. It seems to us that the words "in respect of *sales* in execution of decrees" do not include any proceedings instituted *after the sale* for setting it aside. We think, therefore, that only the provisions of the Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and therefore the provisions of sections 311 and 312 are not applicable.....We are of opinion that the only remedy of a judgment-debtor, whose property has been sold in execution of a certificate issued under Bengal Act VII of 1880, and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale, is by way of appeal under section 2 of Bengal Act VII of 1868.....We think that by the force of section 2 of Act VII of 1880, the provisions in section 2, Bengal Act VII of 1868, became applicable to a sale under an execution issued upon a certificate made under Act VII of 1880."

22. This last argument is based upon the fact that in section 2 of the Act of 1880, it is directed that the Act shall be construed as one with Act XI of 1859 and Act VII (B. C.) of 1868. This provision, as mentioned in paragraph 3 above, it is now proposed to repeal, and thus remove the confusion that has arisen from regarding the three Acts as one. But as the law stands at present, the wording of section 2 afforded grounds for the view held by the learned Judges. It also carried them a step further; for the decision goes on to say: "That being so" (*i. e.*, the three Acts being regarded as one), "the sale in this case may be considered as a sale under section 2 of Act VII of 1868 within section 2 of that Act. The appeal under that section against the sale therefore lies to the Revenue Commissioner. Similarly, all sales under Act VII of 1880 would become final in the manner and at the time provided in section 27 of Act XI of 1859." The ruling in this case was followed by another Bench of the High Court in the case of *Ramlagan Ojha* versus *Bhawani Ojha*, 14 I. L. R., 9.

23. The effects of this judgment upon the working of the certificate system are, in the opinion of the Board of Revenue and all officers of experience, very serious. In the first place, appeals against sales must be made to the Commissioner, and thus a costly and tedious process is substituted for the simple and expeditious one of applying under section 311 to the Court which held the sale. In many parts of Bengal many thousands of certificates are issued every year, often for comparatively small sums, and it is unavoidable that errors should creep in, and a certain number of erroneous sales should be made. The person injured should have a ready and simple means of redress, such as is provided by section 311; but under the High Court ruling he has to go to the Commissioner's Court, often a great distance off, and institute a regular appeal.

24. Secondly, if, as held by the High Court, all proceedings after the sale are governed by Act XI of 1859, then the certificate to be given by the Collector to the purchaser must be in the form prescribed by section 28 of that Act. But what passes by a sale under Act VII of 1880 is the right, title, and interest of the judgment-debtor, and this may be merely a share in an estate, or a certain number of fields, a tenure, or a raiyat's holding; whereas the certificate under section 28 of Act XI conveys an absolute title to an estate or share of an estate on the Collector's tauzi or rent role, and not merely the rights and interests of the judgment-debtor. A certificate under this section may therefore be issued for something which has not been sold, and by the person injured can have no redress but by a civil suit under section 33. Even this remedy is denied him if the usually received view is acted upon, under which no one but a defaulter can appeal to the Commissioner, and no sale can be annulled by a Civil Court unless there has first been an appeal to the Commissioner.

25. The remedy for the various inconveniences caused by this decision of the High Court seems to consist in defining accurately those portions of the Civil Procedure Code which are applicable to sales under a certificate. This has now been done in section 21 of the Bill. The list has been drawn so as to include all sections of the Procedure Code which can in any way be rendered applicable to sales under this Act, especially the important sections 311 and 312, and the order of the items has been re-arranged so as to bring it into accordance with the arrangement of subjects in the Civil Procedure Code now in force (Act XIV of 1882). Although the list of sections now given may at first sight appear lengthy, yet a comparison of the twelve groups of this section of the Bill, with the corresponding portion of section 19 of the Act, will show that no new sections have been introduced; the law remains as it was; no portions of the Civil Procedure Code which were not, previous to the High Court's ruling, generally understood to be applicable to certificates, have now been made applicable. All that has been done is to state definitely, one by one, the sections applicable, so that in future no doubt whatever may exist on the subject. There may be room for question whether this or that section should be included or excluded from the list, and this will doubtless be duly considered in Committee. The principle followed has been, while adhering to the specification given in section 19 of the Act as far as its vagueness would allow, to exclude all sections of the Code which refer to matters not likely to came within the limited scope of certificate proceedings, or which would tend to make the proceedings unduly complicated or protracted.

26. As regards the special question raised by the decision in *Sadhusaran Singh's* case, the mention of sections 311 and 312 in item (7) of the section removes all doubt, and makes it

clear that the procedure for setting aside a sale will, if the Bill become law, be by petition to the Court which held the sale, and not by appeal to the Commissioner, while the total dissociation of the certificate procedure from that of sales for arrears of revenue effected by the preparation of two separate Bills for the two processes, will prevent any confusion arising from the supposed relation of the old section (2 of Act VII B.C. of 1868) to certificate sales. Further, the insertion of sections 314 and 316 in item (6) of the section makes it clear that the sale becomes final and possession is to be given under the terms of those sections, and not, as is assumed in the High Court's decision under the wholly inappropriate and inapplicable sections 28 and 29 of Act XI of 1859.

27. *Section* 22.—The final sentences of section 19 of the Act have here been thrown into a separate section under clauses (*a*) and (*c*), because section 19 was already too long. In clause (*c*) the words "Collector of the district" have been substituted for "Collector" in order to carry out the principle enunciated in paragraph 7 above, of establishing and carrying through the whole system of certificate procedure the distinction between the executive head of the district and an officer invested with the powers of a Collector.

28. Clause (*b*) is now, and is intended to meet a difficulty which has arisen. It has been represented by many Collectors that the rules issued by the High Court under section 287, of the Civil Procedure Code regarding sales of immoveable property, were not suitable for certificate sales, as they "not only entail expenses, but make the already tedious procedure still more tedious and dilatory." Two instances of this effect of the rules were brought into special prominence. In the first place, the rules require that ten days' notice shall be given to the defaulter before fixing the details of the sale proclamations; and secondly, a search is to be made in all registry offices for possible incumbrances on the property sold It is obvious that when the Public Demands Act has already allowed ample delay to defaulters, it is not necessary to allow still further time, and that in the cases of the usually petty properties sold in certificate cases, it is not necessary to institute an elobarate search for incumbrances. In fact, the High Court rules are made for a state of things which differs very considerably from that prevailing in certificate matters.

29. Under the circumstances, the Board adopted the course of directing Collectors to guide themselves by certain portions of the High Court's rules only, and to pass over the rest as inapplicable; but the correctness of this course is open to question, for either section 287 is applicable to certificate sales or is not. If it is not, then the whole of the High Court's rules cease to apply. If it is, then the whole of the rules apply, and as they have the force of law, it does not seem that an executive authority, such as the Board of Revenue, is competent to set aside any of them. The question as to which sections of the Civil Procedure Code are, and which are not, applicable to certificate matters being now set at rest by section 21 of this Bill, and section 287 having been therein declared to be one of those sections which is so applicable, it will follow, if the section of the Bill be passed, that so much of section 287 as directs that the High Court shall frame rules, and that those rules shall have the force of law, will be in force and cannot be set aside. As the most experienced revenue officers are unanimously of opinion that the High Court's rules, being made for a totally different class of work, are not suitable to certificate cases, and cannot be followed without imposing on parties to the case expenses and delay, it seems advisable to transfer to the Board the power of making such rules as may be suitable to the circumstances of certificate sales. In making this transfer the Bill merely carries on the analogy of the general provisions of section 19, for if the Collector is substituted for the Civil Court, it is only consistent to substitute the Board—the chief revenue authority in these provinces—for the High Court It will also not be disputed that no authority is so likely to be well acquainted with the peculiarities of certificate proceedings, or so well qualified to judge what rules should govern them as the Board of Revenue.

30. *Section* 30.—The latter part of this section, beginning at the words "and no officer," has been added to this section from the Board's rules in the Certificate Procedure Manual. The rule in question was issued with the sanction of Government, and its insertion here is thought advisable with reference to the distinction between "Collector" and "Collector of a district" made in section 4 (*b*) *ante*.

31. *Section* 31.—This is new. In the case of *Rakhal Chandra Rai Chowdhry* versus *Secretary of State*, 12 I. L. R., page 603, the High Court held that "no special provision is made in Bengal Act VII of 1880 as to the manner of service of the notice prescribed in section 10." This remark overlooks the fact that the mode of service is prescribed by section 5 of Act VII (B.C.) of 1868, and in section 2 of the Act of 1880 it is directed that the Act shall be construed as one with the Act of 1868, consequently the rules for the service of notices laid down in one Act would govern notices issued under the others. This is a striking instance of the inconvenience and confusion caused by the present state of the law. Now that Act VII of 1868 is about to be amalgamated with Act XI of 1859, and the certificate procedure entirely separated from that for revenue sales, it becomes necessary to avoid misleading and confusing references from one Act to another. This section has therefore been introduced prescribing the method of serving notices under the Act. In accordance with the system followed in other parts of the Act, the course has been adopted of declaring certain sections of the Civil Procedure Code applicable to notices issued under the Act, which is thus provided with a procedure entirely independent of any enactments relating to sales for arrears of revenue.

JOHN BEAMES, C.S.,
On Special Duty.

No. 2221—848L.R., dated Calcutta, the 26th June 1890.

From—P. NOLAN, Esq., Secretary to the Government of Bengal, Revenue Dept.,
To—The Secretary to the Government of India, Revenue and Agricultural Dept.

WITH reference to the correspondence ending with Mr. Muir-Mackenzie's letter No. 324C.I., dated the 15th March 1890, I am directed to submit, for the information of the Government of India, the accompanying copy of a Resolution of this Government, dated the 17th June 1890, together with copies of two draft Bills, with explanatory notes appended, prepared by Mr. Beames, to amend and codify the Revenue Sale Law of Bengal. The Bills have been published in the *Calcutta Gazette* for criticism, and I am to request that the Government of India may be moved to obtain the opinion of the High Court thereon.

No. 2222—849 L.R., dated Calcutta, the 26th June 1890.

Memo. from—P. NOLAN, Esq., Secretary to the Govt. of Bengal, Revenue Dept.,
To—The Legislative Department of this Government.

THE Revenue Secretary is directed to forward, for consideration in the Legislative Department of this Government, the accompanying copy of a Resolution dated the 17th June 1890, together with copies of two draft Bills intended to amend and codify the Revenue Sale Law of Bengal. The opinion of the Legislative Department is solicited on the question whether the Bills should be introduced in the Bengal Legislative Council or in that of India. The point is one on which the Government of India have reserved their decision, but the opinion of the Government of Bengal in the Legislative Department will doubtless have much weight. The Revenue Secretary sees no reason why they should not be dealt with in the Bengal Council, as previous legislation of the kind has been.

Dated Darjeeling, the 17th June 1890.

RESOLUTION—By the Government of Bengal, Revenue Department.

READ again—

This Government's letter to the Government of India, No. 3674—1230L. R, dated the 28th September 1889, with enclosures.

Letter from the Government of India, Revenue and Agricultural Departments. No. $\frac{1401}{350}$ R, dated the 29th November 1889.

Read—

This Government Resolution, dated the 2nd December 1889.

Letter from the Government of India, Revenue and Agricultural Department, No. 324C. I, dated the 15th March 1890.

Letter dated the 3rd May 1890, from Mr. John Beames, with enclosures.

IN September 1889 the Lieutenant-Governor represented to the Government of India that it was desirable to recast the law on the important subject of the recovery of the land revenue and other public demands, with a view not only to putting it in a more convenient form, but also to the introduction of such substantive improvements as it seemed possible to effect for the convenience of the different classes concerned, without impairing the efficiency of the system. In the interest of the zamindars, Sir Steuart Bayley proposed to give them notice through the post, if they so desired, of any failure on the part of their agents to pay the revenue before the latest appointed day, an arrangement originally suggested by the British Indian Association in 1874; to give one shareholder, advancing revenue on behalf of his partners, a summary means of recovering the amount from them, as recommended by the East Bengal Landholders Association; to take additional precautions to secure the due publication of the notices prescribed by law; to permit payment after the latest day, subject to a fine; and, when auction sales unfortunately occurred, to ensure the best price for the property, by giving the purchaser the most assured title possible. For the benefit of mortgage-holders and other incumbrancers, the Lieutenant-Governor desired to enable them also, according to the suggestion of the British Indian Association, to secure notice of default of revenue, if they desired to do so, and to appeal against irregular sales affecting them injuriously. Under the existing law unregistered tenures are voidable on the occurrence of revenue

sale at the pleasure of the purchaser, and in the case of the majority of such tenures the time during which registration might have been effected has elapsed. The Lieutenant-Governor considered that if the deed constituting the tenure has been registered within the period prescribed by Act III of 1877, effect may be given to it at any time for the purposes of the Sale law by the further registration required by Act XI of 1859, and that tenure-holders should be encouraged to protect themselves in this way by a reduction in the fee charged. This will prevent revenue sales from affecting injuriously the position of a numerous class in no way responsible for the defaults by which such sales are occasioned. Much importance was attributed to an amendment suggested in the interest of raiyats and others, against whom certificates for the realization of dues have been made, by permitting the Collectors to set aside irregular sales held under their own certificates. At present the only remedy is by appeal to the Commissioner, a more distant and less familar authority, with whom the poorer debtors do not always find it easy to communicate. The Lieutenant-Governor proposed to have these amendments embodied in two Bills—one for the recovery of land revenue, the other regulating the procedure for recovering other public demands—and to publish the Bills for the criticism of those affected. The Government of India having accepted the proposla, the Bills have been prepared with great care by Mr. Beames, with explanatory notes indicating in detail the different changes which they introduce, and the opinion of the Board of Revenue and of the principal Associations of the Province will be solicited as to their merits. The further action of this Government must depend on the tenor of the replies which may be recieved.

ORDER.—Ordered that this Resolution, with the draft Bills and the explanatory notes appended thereto, be published in the *Calcutta Gazette*, and that copies be forwarded to the Government of India, the Board of Revenue, the Superintendent and Remembrancer of Legal Affairs. and to the Associations named below:—

The British Indian Association.	The Central Muhamadan Association.
The Indian Association.	The Bihar Landholders' Association.

The East Bengal Landholders' Association.

No. 2223—850L. R.

COPY, with copies of the draft Bills and the explanatory notes, and of the correspondence noted in the preamble to the Resolution, forwarded to the Board of Revenue, Land Revenue Department, for the favour of a report, with reference to the correspondence ending with Mr. Bolton's letter No. 737A., dated the 10th September 1889.

No. 2224—851L. R.

COPY, with copies of the Draft Bills and the explanatory notes, forwarded to the Superintendent and Remembrancer of Legal Affairs for the favour of an expression of his opinion.

Nos. 2225-29—85256L. R.

COPY, with copies of the draft Bills and the explanatory notes, forwarded to the Secretary to the Association for the favour of an expression of the Association's opinion.

By order of the Lieutenant-Governor of Bengal,

W. MAUDE,

Offg. Under-Secy. to the Govt. of Bengal.

CALCUTTA,
The 26th June 1890.

No. 511A., dated Calcutta, the 27th June 1890

From—C. E. Buckland, Esq., Secretary to the Board of Revenue, Lower Provinces,
To – The Secretary to the Government of Bengal, in the Revenue Department.

The Hon'ble F. M. Halliday

I am directed by the Board of Revenue to acknowledge the receipt of your letter No. 304—90LR., dated the 24th January 1890, enquiring how the provision in Bengal Act VII of 1868, making tenures saleable for arrears of revenue, has worked in practice, and to reply as follows.

2. The Commissioners of all the Divisions were called upon to submit reports on the subject. In the Chota Nagpur, Bhagalpur, and Rajshahi Divisions only two tenures have been sold in Pabna under section 11 of Act VII (B.C.) of 1868, since the passing of the Act, and in the Sonthal Parganas some holdings of cultivators under the Court of Wards have been sold. As these are not in all cases transferable by custom, the Deputy Commissioner has discouraged such sales. The Board have desired the Commissioner of Bhagalpur to insist upon compliance with the provisions of the law before sales of tenures are effected under it.

3. In the Patna Division the sales of tenures which have taken place in Gaya, Darbhanga and Patna, have been effected under Act VII (B.C.) of 1880, which is considered to afford "a means for the realization of arrears so easy and so safe that the special procedure under Act VII (B.C.) of 1868 has been lost sight of. The only tenures sold are reported to be holdings in Government estates, and these were brought to sale only to a very limited extent, and only when the defaulters were found to possess no other property than the holding for which the rent was in arrear." No attempt has ever been made to work section 11 of the Act in the Patna Division, and no Collector is in favour of it.

4. In Orissa Act VII (B C) of 1868 has been worked only in the district of Puri, but the provisions of section 11 have never been applied to Khurda, because the latest days of payment fixed under Act XI of 1859 do not agree with the times fixed for payment of rent in the estate under the settlement. Except lakhiraj or other unsaleable tenures, all other holdings are treated as raiyati and dealt with under the certificate procedure. In the Sadar subdivision the following classes of saleable tenures in the khas mahals are put up to sale if revenue is not paid by the latest day fixed for payment in Orissa, and no difficulty is found in realizing their arrears:—

(1) Makadami.	(3) Confirmed tanki.
(2) Padhani or mourasi sarbarakari.	(4) Resumed tanki.

(5) Resumed lakhiraj.

The Collector states that the holders of tenures (3) to (5) may, in certain cases, be the actual cultivators, and may correspond to the Midnapore aymadars, but he does not think that this is usual, and in any case at least with tanki tenures. Summary sale he considers the only satisfactory method of raising the Government dues, as in a petty tenure with a small *jama* there may be hundreds of owners. Raiyati holdings with right of occupancy have not been treated as tenures, the rents being realized under the certificate procedure without sale.

The Collector thinks that the provisions of section 11 may be said to have worked satisfactorily. On the one hand, he does not think there is any hardship in the sale of the tenures at present sold, and on the other it is not desirable to extend the procedure to holdings of a raiyati nature. The Commissioner agrees with the Collector.

5. In the Dacca Division the Act has not been applied in the Dacca, Faridpur, and Mymensingh districts, and has only been enforced in Backergunge since last year with very satisfactory results. Occupancy rights have nowhere been brought to sale for arrears of rent.

6. Greater use has been made of Act VII (B.C.) of 1868 in the Chittagong Division. In Tippera the Act has only been applied to the Bulda khal tenures, and has worked without inconvenience or hardship. In Noakhali tenures paying Rs. 50 and upwards, have since 1886-87 been sold under the Act. In the three years 19 tenures have been sold out of 285 tenures liable

to sale. The Collector considers the procedure more rapid, less troublesome, and less expensive to the tenure-holder than the certificate procedure, and that it does not fall harshly on the defaulters. In the Chittagong district the talukdars and etmamdars (whose tenures are sold under the provisions of the Act), are not ordinarily the actual cultivators of their holdings, differing in this respect, says the Collector, widely from the aymadars of Midnapore. The Board are not aware that the Collector of Chittagong has any special knowledge of the Midnapore district and the aymadars to whom he alludes.) The sale law has worked leniently and beneficially in respect of the taluks and similar holdings of this district. The tenure-holders regard the liability to sale as a valuable privilege based on their kabuliyats, and the procedure is considered to be far less summary and harassing than the certificate procedure. Arrears are received with the utmost consideration up to and on the day of sale. The Collector adds:—

"It is most important to bear in mind that the tenure-holders in this district have no right of relinquishment such as raiyats have. They cannot seek for abatement of *jama*, however well founded the reason may be for desiring to do so, *e.g.*, diluvion. If they were unable to get rid of their taluks by a simple default in payment of dues, all their property would in course of time undergo attachment and sale. In fact a taluk not liable to sale like an estate would be regarded as no taluk at all. It would be practically impossible to ascertain which talukdars are actual cultivators and which are not, except in the case of recently resettled holdings.

The Commissioner of Chittagong is decidedly in favour of sale as opposed to action by certificate. He regards it as best for Government and best for the people. He thinks the people of Chittagong would justly look on it "as a real hardship if sales were stopped, and the slow and expensive certificate procedure were introduced."

7. In the Presidency Division no tenures have been sold under the Act in Nadia, Khulna, and Jessore: the Collector of the district last named thinks the issue of a certificate is the safer procedure in case of tenures. Only one sale of a tenure, and that of a patni tenure in a certificate case, has taken place under the Act in the Murshidabad district. The Collector of the 24-Parganas differs from the views taken by Government as to the definition of "tenure" as described in the Act, and gives his opinion as follows:—

"The definition of 'tenure' in Act VII (B.C.) of 1868 is certainly wanting in precision, and it would be well if it were amended in connection with the revision of the revenue sale law now under consideration. I have myself experienced some difficulty in determining the particular classes of holdings to which the definition should be limited, and the same difficulty has probably presented itself to other Collectors in the course of their work. It seems to me, however, sufficiently clear that the term 'tenure' as here used cannot be held to include ordinary occupancy holdings, as the Government is disposed to think, and I doubt if it has even been so held by Collectors generally. Only such holdings as would be within the meaning of the Bengal Tenancy Act would be treated as falling within the definition and liable to sale under section 11 of the Act. It will again be noticed that only tenures paying revenue or rent to the Government are saleable under the section. Tenures in private estates managed by the Court of Wards are not so saleable, the certificate procedure being in their case resorted to for the recovery of arrears if necessary. The provisions of Act VII (B.C.) of 1868 thus affect a comparatively small number of tenures, save in a very few districts.

"In this district the number of such tenures is unusually large, because the permanently-settled holdings of the Government estates of Punchannogram and Baranagore have been ruled to fall within the Act, and are saleable under section 11. These are mostly urban lots occupied by buildings, and the rents are merely ground rents. They thus differ materially from agricultural holdings, and objection to the applications of sections 11 of Act VII (B. C.) of 1867 to the latter class of holdings are not relevant to their case.

With respect to the working of section 11, the Collector supports the following remarks of the Deputy Collector in charge of khas mahals:—

"From my own experience in the khas mahal office, I am glad to say that the provisions of Act VII (B. C.) of 1868 have been simply acted up to in this district. The summary procedure provided for in Act VII (B C.) of 1868 making tenures saleable under the provisions of Act XI of 1859, has not only the least advantage of realizing the revenue with great facility and promptitude without the aid of the collecting agency, but it avoids the exactions and malpractices to which the tenants are subjected, where the collections are made by the collecting staff consisting of superintendents, naibs, gomashtas, and peons."

The Collector adds that defaulters are treated with leniency, payment being received after the latest day—even up to the time fixed for the sale.

The Commissioner states that, so far as his experience extends, the provisions under consideration have been applied only to tenures held direct from Government in Government estates, and he has never known them applied to occupancy holdings.

8. The Commissioner of Burdwan submits no general report for his division. The Collector of Midnapore has reported with special reference to the aymadars of that district. "The procedure of the sale law," he writes, "has been applied in realizing rents not only of the aymadars of Government estate Balarampore, but also of the malgoozardars of Government jalpai estates settled with them as chakdars having rights of occupancy raiyats. No difficulty is felt in realizing rents from these men, though some of them withhold payment till the last coercive measures are taken. Some of these men may hold a small portion of their lands in nij-jot, but the greater portion is let out to others. So far as known in this office, there are no aymadars or malgoozardars who can strictly be called the actual cultivators of the soil, *i.e.*, whose sole occupation is the cultivation of their own lands. Under the above circumstances, I do not think any change in the sale laws in favour of the aymadars is at present necessary."

9. The facts connected with the working of section 11 of Act VII (B.C.) of 1868, as reported by the officers consulted, have been set out in the preceding paragraphs. They have also offered certain suggestions which may be here reproduced:—

(*a*) The Commissioner of Patna considers that any measure extending the summary provisions of the sale law to raiyats' holdings would be impolitic and harsh. It would be as well, he thinks, to repeal section 11 of the Act. He suggests that, if provisions are made by law to enable Government to bring tenures to sale in khas mahals and in Wards' and attached estates, some similar provisions should be made both in the interests of landlords and tenants in other estates. The Board are not aware of any intention of enlarging the definition of 'tenure, in Act VII (B.C.) of 1868. Mr. Kemble's suggestion for the repeal of section 11 does not appear to have been fully considered. His views seem to be not altogether clear, as in one paragaph he writes, as already quoted, "the only tenures sold are reported to be holdings in Government estates," and in another "if provisions are made by law to bring tenures to sale in khas mahals." The practice of the khas mahal office in the 24-Parganas shows that tenures in Government estates can be and have been brought to sale under Act VII (B.C.) of 1868 for arrears. The Collector of the 24-Parganas states that the certificate procedure is adopted in the case of tenures in Wards' estates, and in the Board's opinion there is no necessity for any change in this respect. Tenures in the estates of ordinary landlords can be dealt with under the Bengal Tenancy Act.

(*b*) The Collector of Backergunge recommends that occupancy rights should be made saleable for default in Government estates, powers being reserved to the Collector to interfere in cases of hardship. But the late Commissioner of Dacca (Mr. Clay) has pointed out that occupancy rights are saleable already, whenever such rights are transferable by custom, as appears to be the case in Backergunge, so that no change in the law is necessary. The Commissioner thought it desirable for the Collector to have the *power to sell* in such cases.

(*c*) The Collector of Tippera considers that the operation of the law might with advantage be extended to occupancy and other raiyati rights. The Board observe that he has overlooked the fact that the law already applies to certain occupancy rights, and it is for him to enforce it when he thinks fit: its extension to raiyati rights is not a proposal supported by other opinions.

(*d*) Similar remarks apply to the Collector of Noakhali's suggestion that the law might with advantage be worked also as regards occupancy holdings. The Commissioner of Chittagong suggests

that the time has arrived when the Act may be extended to all tenures, even to occupancy rights. It is, in the Board's opinion, for the local officers to give effect to the provisions of the law regarding the sale of tenures for default of payment of revenue payable to Government as they may deem expedient. They presume that the Commissioner does not suggest the extension of the Act to the sale of occupancy rights in ordinary zamindaris.

(*e*) The Collector of Noakhali thinks too that in case of sales of tenures the right to void under-tenures should be subject to the sanction of the Collector, so as to prevent sales being made in order to get rid of under-tenures. On the other hand, the Commissioner of Chittagong points out that the experience of Chittagong does not show that any safeguard for under-tenure-holders is necessary such as that suggested by the Collector of Noakhali.

(*f*) The Collector of Chittagong considers the Act to be susceptible of several improvements. In his opinion "clear provisions should be made for the payment of surplus sale proceeds, and a limit of time should be prescribed within which auction-purchasers can take out their sale certificates. Some taluks are very large—larger than many estates—and it seems desirable to extend to them the privileges of separate account accorded under Act XI of 1859."

These suggestions (*e*) and (*f*) may be considered in connection with the general revision of the revenue sale law, but they do not affect the matter immediately under report.

10. The opinion expressed by the Collector of the 24-Parganas on the meaning of the word "tenure" in the Act does not appear to the Board to be correct. The term "tenure" undoubtedly includes, *inter alia*, an interest in land, which by custom is transferable, and therefore includes an occupancy right when it is by custom transferable. The aymadari tenure is recognized by section 15 of Regulation XXXVII of 1793 as transferable,* and aymadars have been declared † by the Civil Courts to be raiyats having a right of occupancy. The Board are of opinion that Collectors would be right in not holding the term "tenure" to include ordinary occupancy holdings, *i.e.*, in ordinary zamindaris, but it was certainly open to Collectors to include in it occupancy rights transferable by custom, the rent or revenue of which is payable to Government. The Collector considers that only such holdings as would be tenures within the meaning of the Bengal Tenancy Act, would be treated as falling within section 11 of Act VII (B.C.) of 1868. It seems to the Board that such a treatment of the term "tenure" would be a confusion of its use in the Act VII (B.C.) of 1868, which is an Act for the recovery of revenue (including in that word certain rent which becomes revenue when payable to Government direct without the intervention of a zamindar), with its use in the Bengal Tenancy Act, which provides for the recovery of rent.

* See also Wilson's Glossary.

† See also Messrs. Rampini and Finucane's Bengal Tenancy Act, 2nd edition, page 23, and paragraph 58 of Mr. Cotton's memorandum on Land Tenures in Bengal, dated 31st January 1884.

No. 288T., dated Calcutta, the 12th July 1890.

From—C. H. Reily, Esq., Asst. Secy. to the Govt. of Bengal, Legislative Dept.,
To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your memorandum No. 2222—849L.R., dated the 26th ultimo, in which you solicit the opinion of the Legislative Department on the question whether the draft Bills intended to amend and codify the Revenue Sale Law of Bengal should be introduced into the Bengal Legislative Council or in that of India, I have the honour to state, after a careful perusal of the Bills as they at present stand, that they contain no provisions which are beyond the legislative powers of the Bengal Council; but at the same time I would point out that the Bills, having regard to their provisions and general character, are likely to be very considerably modified before they become law, and more especially in respect to the provisions dealing with procedure, and it is far from unlikely that in attempting to provide convenient machinery for carrying out the

provisions of the measures, the Bengal Council will be hampered considerably by the limited legislative power which it possesses.

No. 914—138-3R., dated Simla, the 5th September 1890.

Endorsed—By the Govt. of India, Revenue and Agricultural Department.

Copy forwarded to the Government of Bengal for information.

No. 911—138-3R., dated Simla, the 5th September 1890.

From—The Hon'ble W. C. Benett, c.s., Offg. Secy. to the Government of India, Revenue and Agricultural Department,

To—The Registrar of the High Court of Judicature, Calcutta.

In forwarding the papers noted on the margin, connected with the Bill to amend and codify the Revenue Sale Law of Bengal, I am directed to request that His Honour the Lieutenant-Governor of Bengal may be favoured direct with a copy of any remarks which the Hon'ble the Chief Justice and Judges of the High Court may be good enough to make upon the principles and provisions of the proposed Bills.

1 Resolution by the Government of Bengal, dated 17th June 1890.
2. Draft Bill to amend the Public Demands Recovery Act, 1880, with explanatory notes by Mr. Beames, c.s.
3. Draft Bill to amend the Revenue Sale Law, with explanatory notes by Mr. Beames, c.s.

2. Although the Bills have not yet been introduced into the Bengal Legislative Council, they relate exclusively to the Province of Bengal, and His Excellency the Governor-General in Council is consequently of opinion, with reference to the Hon'ble Court's letter of the 26th February 1885, that the Lieutenant-Governor might have requested the favour of the Hon'ble Judges' advice direct.

No. 338T.R., dated Darjeeling, the 14th October 1890.

From—C. E. Buckland, Esq., Offg. Secy. to the Govt. of Bengal, Revenue Dept.,

To— The Registrar of the High Court of Judicature, Calcutta.

The Government of India have forwarded to this Government a copy of the letter of the Officiating Secretary, in the Revenue and Agricultural Department, No. 911—138-3R., dated the 5th September 1890, to your address. From this communication it appears that the Honourable the Chief Justice and Judges of the High Court have been desired by his Excellency the Viceroy and Governor-General in Council to favour the Lieutenant-Governor of Bengal direct with a copy of any remarks which they may be good enough to make upon the principles and provisions of the Bills drafted by Mr. J. Beames, c.s., to amend and codify the Revenue Sale Law of Bengal and the Public Demands Recovery Act, 1880. The Lieutenant-Governor had requested the Government of India to obtain the opinion of the Honourable Judges on these Bills, but he observes that the Government of India think that he should have addressed the Court direct.

2. With reference to the communications above mentioned, I am directed to forward, for the information of the Honourable the Chief Justice and Judges of the High Court, a copy of the correspondence noted in the margin, and to state that the question has not yet been decided whether the contemplated legislation on these subjects is to be undertaken in the Legislative Council of the Government of India or in the Bengal Legislative Council. His Honour has been advised that the draft Bills, in their present form, contain no provisions which are beyond the legislative powers of the Bengal Council, but the question indicated cannot be fully determined until the reports and criticisms called for and invited have been received and considered.

No 324C.I., dated 15th March 1890, from the Under-Secretary to the Government of India, Revenue and Agricultural Department, to the Government of Bengal.
No. 2221—848L.R., dated 26th June 1890, from the Government of Bengal and to the Government of India.

3. Having regard, however, to the correspondence which took place in the year 1885 on the subject of the relations of the High Court to the Local Government, and with special advertence to Mr. Wilkins' letter No. 677, dated 26th February 1885, Sir Steuart Bayley hesitated to address the Honourable the Chief Justice and the Judges direct on the subject of the contemplated legislation while the point referred to in the preceding paragraph still remained unsettled. He understood that, if it were decided to introduce the Bills into the Legislative Council of the Government of India, the Supreme Government would consult

the High Court, and that the Government of Bengal would be furnished with a copy of any report which the Honourable the Chief Justice and the Judges might make to the Government of India, and he was under the impression that in moving His Excellency the Viceroy and Governor-General in Council to obtain the opinion of the High Court he was carrying out their wishes with respect to the course of correspondence on the subject of projects of legislation.

4. With this explanation of the circumstances to show why the Lieutenant-Governor has refrained hitherto from asking the High Court direct to favour him with their advice and opinion upon the draft Bills in question, I am to say that, as the Government of India have addressed the High Court and furnished copies of the draft Bills and the Resolution of this Government of the 17th June 1890, His Honour will be glad to receive a copy of any report connected with the proposed legislation which the Honourable the Chief Justice and the Judges may see fit to forward to the Government of India. He will also have much pleasure in directing the High Court to be furnished with copies of any papers, proceedings, or records of the Bengal Government, to which they may desire to refer.

No. 8, dated Dacca, the 8th October 1890.

From—Babu Purno Chunder, Banerjee, Honorary Secretary, East Bengal Landholders' Association,

To—The Secretary to the Government of Bengal, Revenue Department.

I am directed by the East Bengal Landholders' Association to submit the following remarks on the draft Bills to amend the Revenue Sale Law and the Public Demands Recovery Act.

(1) The Sale Law.

Section 11.—The fine of 25 per cent. is too high. In the opinion of the Association a fine not exceeding 10 per cent. up to Rs. 100, and 5 per cent. up to Rs. 1,000, and 2 per cent. on sums exceeding that amount with a minimum of one rupee would be fair. If experience shows that the above limit has no deterrent effect on defaulters, and that they persist in not paying their revenue in time, the limits might be increased. The fine, if paid by one co-sharer, should be realizable by a certificate in the same manner as revenue under section 16.

Section 14.—In addition to the notice to interested parties being sent in a registered cover, an extra anna should be paid by the Collector in each case, so as to obtain an acknowledgment of the receipt of the notice. These costs should be realized from the defaulters.

Section 16.—By this section power has been conferred on any recorded proprietor of an estate, share of an estate or independent tenure, to apply to the Collector to make a certificate for the realization of revenue paid in excess of his share. But the time allowed (15 days) is too short a time to obtain the information which it will be necessary for the applicant to collect before moving the Collector. It is not always easy to find out who the actual defaulter or defaulters are. If by mistake the name of a person not in arrear is included, the applicant becomes liable to pay his costs. And to get the names of the defaulting persons, the Collectorate records must be searched. The Association is therefore of opinion that a section should be added providing for the necessary information being supplied by the Collector, the costs, if any, to be added to the amount of the certificate. To obtain the necessary information some time will elapse, and the Association considers that at least two months' time should be given instead of 15 days as allowed by this section. In this view I am directed to suggest that section 49 of the Cess Act (of which section 16 is a counterpart) should also be modified and the time extended to two months.

Section 50.—Add the words "this certificate shall bear the date upon which the sale becomes final and conclusive," so as to follow, as far as possible, the procedure now adopted under the Civil Procedure Code, section 316. Under the Limitation Act time will run as against the purchaser from the date of the sale becoming final and conclusive, and the fact of the certificate of sale bearing very often a different date has, under the present law, led to serious mistakes being made.

Section 51.—Under this section the Collector is only empowered to give symbolical possession, and if need be, to remove any person who refuses to vacate. The Association would, however, submit to the Government that this does not practically overcome the difficulties with which a purchaser usually has to contend in cases of this nature. It frequently happens that the proprietors of the estates adjoining the one in question have from time to time encroached upon, and have actually at the time of sale got possession of, a large portion of the purchased estate—in fact, this may be the very reason of the former proprietors' default. Such dispossessed portion could not, unless regularly surveyed, be properly ascertained ; and unless some summary measures through the Collector be offered to purchasers to enable them to obtain actual possession of the whole estate as it was when the revenue was originally assessed upon it, intending purchasers will be threatened with such serious and doubtful civil litigation to secure the rights, that in many instances the estate will not realize anything approaching its actual value, and in some cases not even the arrear due upon it. The Association would therefore suggest that upon application being made to the Collector by the purchaser within one year of the sale becoming final, the Collector may, at the cost of the purchaser, depute an amin to survey and demarcate the boundaries of the purchased mahal according to the thak map, which will, under the High Court ruling (Shama Sundari Dassee *versus* Jagabandhu Sutar, Indian Law Reports, Calcutta Series, Volume 16 page 186), be presumed to represent correctly the state of the mahal at the time of the permanent settlement. The Association would also suggest that at time of the survey such stone pillars or lasting boundary marks be put up as will prevent future encroachments being made.

Schedule III.—The fees for deposit and for drawing interest and for withdrawing deposit should be 4 annas per cent., as is usual in banks. The fee for opening separate accounts should be 3 per cent. up to Rs. 1,000, and above that one rupee per cent. for any fraction of Rs. 1,000, with a minimum of one rupee for sums less than Rs. 100.

(2) Public Demands Recovery Act.

Section 18.—The time allowed for appeal should be at least one month instead of 15 days.

No. 10, dated Bankipore, the 17th November 1890.

From—The Secretary to the Bihar Landholders' Association,
To—The Under-Secretary to the Government of Bengal, Revenue Department.

With reference to the Government Resolution, dated Darjeeling, the 17th June 1890, and its annexures, and your letter No. 3581—1357L. R., dated the 4th November 1890, I am directed by the Committee of the Bihar Landholders' Association to submit the following suggestions and remarks on some of the sections of Mr. Beames' draft Bill to amend the Revenue Sale Law.

Section 11.—In place of "an additional sum, being one-fourth of the amount of such arrears," the Committee of the Bihar Landholders' Association suggest "an additional sum, being 5 per cent. of the amount of the arrears."

In the proviso to that section they suggest that the additional sum should be 3 per cent. and 2 per cent., respectively.

Section 14.—In order to induce persons interested in an estate to register their address, the fee, as in Schedule III, two rupees yearly, should be reduced. The Committee suggest that it should be one rupee for each registered notice of default.

Where one notice would suffice for any number of estates, provision should be made for one notice with an increased amount of fee.

Section 16.—"And shall bear a Court fee, &c., &c." The relief provided for by section 49 of the Cess Act [Act IX (B.C.) of 1880] is cheap and expeditious. When a similar measure of relief is contemplated to be given in case of excess payment of Government revenue by one of the co-sharers, it should be in the same way cheap and expeditious. There is another reason why the full stamp should not be payable: the Collector's proceeding would not be final, and parties aggrieved would be entitled to bring a regular suit.

The last proviso of section 49 of the Cess Act should be added to this section. It is a salutary provision, and enables the Collector to take cognizance for rateable distribution and equitable set-off.

It is possible that the person who has been compelled by the Collector to pay, had not been paying for a series of years, and his co-sharers have been paying for him hitherto, and equitably he is not entitled to recover anything from them.

Section 28.—Government revenue is sufficiently protected by the provisions of section 30. There does not appear to be any reason to enable the Collector to close a separate account of his own motion.

Section 38.—The words "held under attachment" did not, of course, technically include the effect of the proceedings under section 10 of the Public Demands Recovery Act, as therein the words used " were not bringing the immoveable property of the judgment-debtors under attachment," but " *binding* them in the same manner and with like effect as if such immoveable property had been attached under the provisions of section 274 of the Code of Civil Procedure."

There is, however, no distinction between this and the proceedings when property is attached under section 274 of the Code of Civil Procedure; and the principles on which a notice is held necessary in one case applies to the other also The explanation, the Committee respectfully suggest, should be to the contrary. " The proceeding under the provisions of section 10 of the Public Demands Recovery Act is an attachment within the meaning of this section."

Sections 41 *and* 52.—To the words " shall duly attest in a proceeding," the Committee suggest the addition of the words " in which all the details of the mode of publication of the notices shall be stated," or in the form as given in Schedule IV," the schedule to contain a skeleton form of details necessary; and thus, if on the face of the proceeding of attestation an irregularity be patent, the Commissioner in appeal, and the Civil Court in a suit to set aside the sale, might take cognizance of such irregularity. If a sale takes place within 30 days of the publication of notice under section 6 of the present law, it would be no sale at all; yet if the Bill stands as it is, the attestation shall be a bar. Act VII (B.C.) of 1868 provided only that the certificate shall be conclusive as to *service* and *posting*. The present Bill should not provide further. It would be opposed to the broad principles laid down in Regulation II of 1793, which provided—" All questions between Government and the landholders respecting the assessment and *collection* of the public revenue * * * have hitherto been cognizable in Revenue Courts * * * Exclusive of the objections arising to these Courts from their irregular, summary, and often *ex-parte* proceedings, * * * it is obvious that if the regulations for assessing and collecting the land revenue are infringed, the revenue officers themselves must be aggressors * * * The revenue officers must be deprived of their judicial powers. All financial claims of the public, when disputed under the regulations, must be subjected to the cognizance of courts of judicature. * * *"

The Bill provides for relief by civil suits in Civil Courts, but if the Bill were to stand as it is, it will oust the Civil Courts' jurisdiction in many cases where the Civil Courts now exercise jurisdiction. Of course the change is intended to confer a better title on auction-purchasers, but the Committee beg to point out how it militates against a settled principle of revenue law.

Section 46.—One of the objects of Government being to confer a better title on auction-purchasers, there does not appear to be any reason why a distinction shall be made between cases where the appellant is the proprietor, clause (*a*), and where the appellant is not the proprietor, clause (*b*). The present law provides that in all appeals which, however, now come under clause (*a*), not only the irregularity has to be proved, but also substantial injury as the result thereof. If the Bill stands as it is, it betters the case of proprietor-appellants by making the sale reversible simply on proof of irregularity.

No. 951, dated Calcutta, the 18th November 1890.

From—T. T. Allen, Esq., Supdt. and Remembrancer of Legal Affairs,
To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your No. 2224-851L.R. of the 26th June last, I have the honour to say that in general I approve of the proposed draft Bill for consolidating and amending the existing Revenue Sale Law, the rather because the alterations made thereby are few and not of substantial importance. The amendments

which Mr. Beames proposes are summarized in paragraph 14 of his explanatory note, and to some of these I must express a very decided objection. Clause (*c*) of this paragraph proposes to give a legal right to a defaulter to save his estate by payment any time after the latest day fixed by the Board for payment of arrears, provided he at the same time pays an additional sum as penalty, and that six days remain unexpired to the day of sale.

2. Thus the latest day of payment ceases to be the latest day. We have a still later latest day of payment. Already too much indulgence in this direction has been given, and the practical result is to throw the Government revenue so many months more into arrear than was ever contemplated at the Permanent Settlement. By that settlement a kist day was recognized and appointed on which Government revenue must be paid in for each estate. Any unpaid on that day was an arrear, but Act XI of 1859 indulgently enacted that revenue unpaid on the kist day became an arrear only on the 1st of the ensuing month, section 2. Instead of declaring the estate immediately liable to sale, it further allowed a period to elapse during which the arrear could be paid in and the estate saved from sale, and it was only after the lapse of this period of grave and continued default after the last day on which the arrears were allowed to be received under the Board's indulgent rules, that the penalty of sale was incurred. As a consequence, the idea seems commonly entertained that it is only on the latest day of payment (fixed for receipt of arrears) that in fact the Government revenue falls due.

3. Under the amendment proposed by Mr. Beames, even the latest day of payment will soon be lost sight of, and the sixth day before sale will come to be regarded as the Government *gala* day. I disapprove of this alteration; at most the Collectors might be allowed to receive the overdue revenue, together with a penalty as a matter of indulgence, not as of legal right.

4. I have some doubts also as to the propriety of amendment clause (*d*). To allow recovery under the Certificate Act of private demands may involve the revenue officers in the decisions of perplexing questions as to the respective interests of shareholders in an estate between themselves, with the further disadvantages to all parties that whatever may be done under the certificate procedure, lacks finality and may be all reopened in the Civil Court. The certificate procedure was introduced and justified on the ground that it was public demands which should alone be covered under it: to pervert it now and use it as a summary means of priva te parties recovering an ordinary debt, is a measure I entirely condemn.

5. The amendment noticed in clause (*f*) is one which I have no particular objection to, but its efficacy as a means of excluding the inteference of the Civil Courts and preventing the recurrence of such decisions as the Full Bench case noticed in paragraph 26, I expect little from. However, a recent decision of the Privy Council upsetting a High Court decision, which set aside a sale held under Act XI of 1859, discusses certain provisions of the Act in a manner to raise a doubt whether that Full Bench decision can be held to correctly interpret the law.

6. The amendment of clause (*i*) I disapprove of. The surplus sale proceeds are in the Collector's hand merely as stake-holder. If the parties have complied with the law, the recorded proprietor will be the person entitled to receive the money. Any trouble that may ensue from disregarding the law requiring registration of interest, the parties have themselves to thank for.

7. It should be no part of a Collector's duty under this Act to investigate matters of disputed or questionable claims to this surplus. Behind the entry in his own register the Collector should not be called upon to go or to recognize any one whose name does not there appear. The explanation which Mr. Beames offers in paragraph 40 for the change, is to my mind unsatisfactory. In the case of death, which he puts, the difficulty is solved by the recent Succession Certificate Act, 1889. As to *bonâ fide* litigation between rival claimants, the Collector is a mere *pro forma* defendant, and that he must be still under Mr. Beames' sections. I would cut out sections 54 and 55 of the Bill.

8. The proposal in clause (*l*) to admit all kinds and degrees of tenures to registration, I disapprove. Only tenures held direct from the zamindars require such a protection. It is they are endangered on the sale for arrears of revenue,

and if they stand good all subordinate and derivative tenures will stand good with them. On the other hand, I think Mr. Beames has lost sight of the protection which the Tenancy Act affords to subordinate tenures.

9. To register all classes and kinds of tenures may end in endangering the Government revenue, for by a system of heavy fines and *salamis* with low rents, the zamindars might put the assets of the estate beyond the reach of Government, so that a sale for arrears of revenue should fail to attract purchasers.

10. In conclusion I think that it is very important that the present opportunity should be availed of to consider the Full Bench decision and to distinctly negative the principle therein laid down. The sting of that decision lies not in the mere reversal of a sale which may or may not have been irregular, but in laying down a principle that practically repeals the provisions of section 33, Act XI of 1859, which requires that any suit for reversal of sale must be brought within a year. If a sale be *ab initio* void and outside the Act, so as not to be ruled by the specific words of the Act, then a purchaser's title is in jeopardy, not for one year but for twelve years, and the longer the suit is postponed the more difficult for the purchaser to prove the regular service of notices, processes, &c. That decision must prove most injurious to landed proprietors, for a fair price cannot be expected for an estate when the purchaser buys with a certainty of litigation.

11. Section 8, Act VII (B.C) of 1868, was meant to render impossible such a state of things, but the High Court simply give that section the go by.

12. The Civil Courts should have no power to go into the question of regularity or irregularity. That is a matter which should be raised and decided immediately after the sale while evidence is procurable and all circumstances ascertainable, and the decision should rest with the superior revenue authorities.

13. Fraud alone should furnish grounds for a suit in the Civil Court.

No. 957, dated Calcutta, the 19th November 1890.

From—T. T Allen, Esq, Superintendent and Remembrancer of Legal Affairs,
To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your No. 2224—851L.R. of the 26th June last, I have the honour to say that I approve of Mr. Beames' draft Bill for the recovery of public demands, and generally with the recommendations contained in his explanatory note.

2. Instead, however, of an enumeration of the various kinds of public demands recoverable under the Act, I should prefer a section using general words which should include not merely these, but all similar debts to Government under future Acts as well.

3. It might also be considered in Committee whether municipalities, District Boards, &c., should be entitled to have the Act applied for recovery of debts due to such public bodies

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No. 42, dated Calcutta, the 25th November 1890.

From—Babu Raj Kumar Sarvadhikari, Secretary, British Indian Association,
To—The Offg. Under-Secy. to the Govt. of Bengal, General and Revenue Depts.

With reference to your office memorandum No. 2225—852L.R., dated the 26th June last, I have the honour to submit, by direction of the Managing Committee of the British Indian Association, the following observations on the draft Bill on the Revenue Sale Law and the draft Bill on the Public Demands Recovery Law, forwarded to me with your memorandum.

2. The Committee of the Association fully recognize the necessity of consolidating into one enactment the different Regulation and Acts which at present comprise the Revenue Sale Law of those Provinces, and of amending some of the provisions of that law. They are glad to be able to say that the draft Bill contains in a concise and comprehensive form the various enactments relating to the subject, and that some at least of the changes proposed in it would be great improvements upon the present law. They allude particularly to section 14, which provides for the service of notice on the defaulter and other interested parties, to section 16 which gives a zamindar the benefit of the certificate procedure for the recovery of moneys paid in behalf of his co-sharers,

to section 41 which enjoins the Collector to satisfy himself by personal examination of the publication and service of notices of sale, to sections 11 and 12 in so far as they provide for the payment of land revenue up to the day of sale, and to section 46, which gives to persons other than the defaulter who have been injuriously affected by a sale a right of appeal to the superior revenue authority.

3. The Committee of the Association are also of opinion that the provisions contained in sections 50 and 51 for giving the certificate of sale and possession of the purchaser, those contained in sections 54 and 55 for the disposal of the surplus proceeds of sale, and those in section 56 defining the rights and liabilities of purchasers as regards the collections of rent and payment of back arrears of revenue, will prevent much useless litigation, and place the law on the subject on a definite basis.

4. There are, however, two provisions in the draft Bill which the Committee of the Association feel compelled to take strong exception to.

5. *Sections* 11 *and* 12.—Notwithstanding the Sunset Law for the payment of land revenue, the provisions of section 18 of Act XI of 1859 give Collectors and Commissioners a liberal discretion for receiving the revenue after the fixed day and exempting the defaulting estates from sale. As a matter of fact, this discretion has been always so leniently exercised in favour of defaulters that there have been few, if any, cases in which estates were sold when the arrears of revenue were paid, or tendered before they were actually put up to sale. It would be felt as a great hardship if landholders were now to be compelled to pay a heavy penalty for a default which they have been hitherto allowed to remedy in a way which they have come to look upon as a free privilege. The proposed change in the law would, it is true, enable them to do as a matter of right what they have been hitherto allowed to do as a matter of sufferance and favour, but the penalty or fee is so heavy that the Committee cannot help observing that the proposed change in the law would be regarded by the general body of landholders as exceptionally hard upon them. It would frustrate the object of the liberal provision intended to be made by Government in the interests of the landholders. Mr. Beames refers to Regulation VII of 1830 for a justification of the heavy rate of penalty proposed by him, but it will be seen that what that Regulation really provided was that "defaulters generally shall be subjected to such demand (consolidated penalty and interest) at the rate of 25 per cent. per annum on the arrear of revenue due from the period on which the instalment may become payable until the date on which the arrear may be discharged." The Committee, however, fully appreciate the value of the right which it is proposed to give to landholders by sections 11 and 12, and they would in that view think that if interest at the rate of 12 per cent. per annum were charged on all arrears of revenue paid after the day fixed for payment, it would not be felt as a great change in the present practice, while it would be a more equitable way of charging compensation for want of punctuality than levying a heavy penalty alike from one who has defaulted for a single day as from one who has defaulted for three months or more.

6. *Sections* 57, 66 *and* 75,—The provisions for the protection of tenures by special and common registry in cases of sale of the parent estate were introduced in the Revenue Sale Law of 1859 in spite of much opposition and not without some diffidence as to their result. It was soon found that the Legislature had given the country a law for which there was no demand. Applications made either for common or special registry were few in number, and although after an interval of three years, Act III of 1862 was passed by the Bengal Council in the belief that an extension of time for making applications for registry and a reduction of the rate of fees leviable on such applications would mend matters, tenure-holders still looked upon the provision with the greatest indifference. The Committee of the Association are unable to endorse Mr. Beames' view of the matter that as "tenure-holders of the first grade, those, that is, who hold directly from the zamindars, are usually men of substance and local influence, and though a purchaser has by law the power of ousting them from their tenures, he finds it in practise very difficult to do so," and that tenure-holders, therefore, "feel themselves sufficiently secure without it" (registry). The Committee, on the contrary, believe that a purchaser finds no difficulty whatever in avoiding a tenure where he wishes so to do. The real cause of the apathy of tenure-holders in this respect must therefore be sought elsewhere. The Committee

are of opinion that the proposal made in the draft Bill to give greater facilities for registry by abolishing the limit of time for making applications, by reducing the rate of fees and extending the privilege to all classes and grades of under-tenure-holders, would not only be infructuous as an inducement for registry, but would be positively harmful to the land-holding community. They beg leave to submit below their main objections to the proposal.

(1) The provision in the law enabling tenure-holders to prevent the sale of the parent estates by the payment of the arrears of revenue gives them a sufficient protection. The facility they enjoy in this respect will be much enhanced by the liberal provisions contained in the draft Bill, sections 14 and 17.

(2) The proposed change in the law would tend to perpetuate small tenures and under-tenures and the subinfeudation of estates to the detriment both of the zamindars and cultivators.

(3) It would give tenure-holders for a nominal fee a valuable right at the cost of the zamindars. The bonus or premium paid to zamindars at the time of the creation of the tenure would have been much greater than what it was if the tenure had been created free from the risk of avoidance. As it is, the zamindar received a premium much less than what he would have otherwise received, while the law steps in to perpetuate the tenure and thus reduce the price of the estate at the revenue sale.

(4) The proposed provisions would give rise to great complexity of title and much harassing litigation in cases where the under-tenure-holders shall avail themselves of the provision for registry, while the tenure-holders of the first degree shall neglect to do so.

(5) The proposed change in the law is calculated to encourage the creation of fictitious and fraudulent tenures, and under-tenures, and thus not only to strike at the stability of estates, but also to jeopardize seriously the security against fraud and deceit which the public at present feel in making bids at revenue sales.

(6) The proposed provisions are uncalled for, and they would not supply any real want of the community.

(7) The scale of fees proposed to be levied on applications for opening separate shares appears to the Committee to be inordinately high. The inconveniences attending joint-ownership are great. No obstacle should, therefore, be placed in the way of such applications. It should, moreover, be borne in mind that the fee as it is, is heavy, and that no reasons have been given why the rates should be increased. On this, as on some other maters of detail, the Committee will submit their suggestions after the Bill has been introduced in Council.

8. Before concluding their observations on the Revenue Sale Law Bill the Committee would beg leave to remark that the schedule of enacments to be repealed will require a careful revision, and to refer you to the memorandum of regulations and enactments published in the *Calcutta Gazette* in 1876, when the Government of Sir Richard Temple contemplated to codify the Land Revenue Law of Bengal.

9. The Committee of the Association have little to say on the draft Public Demands Recovery Bill. The provision for the appointment of Deputy Collectors as Collectors under the Act, and for an appeal to the Collector of the district, would not only cause a great saving of time to District Collectors, but also conduce to the convenience of the public. The rectification proposed to be made by section 21 in the present law regarding what portions of the Code of Civil Procedure are applicable to sales under a certificate, would set at rest several doubtful questions as to the law governing the subject, and clearly define the procedure to be followed by persons wishing to contest the validity of sales held under the Act.

10. The Committee recognize the necessity of the provision made by section 14 for the recovery of costs incurred for the recovery of money under the certificate procedure, but they think that it is desirable, in the interests of justice, that a corresponding provision should be made for payment of costs to parties against whom certificates have been inadvertently or wrongfully issued.

No. 528, dated Calcutta, the 29th December 1890.

From—The Hon'ble Syed Ameer Hossein, C.I.E., Honorary Secretary to the Central National Muhammadan Association,

To—The Under-Secretary to the Government of Bengal, Revenue Department.

I am directed by the Committee of the Central National Muhammadan Association to acknowledge the receipt of your memorandum No. 2227—854L.R., dated the 26th June last, forwarding the draft Bills to amend the Revenue Sale Law and the Public Demands Recovery Act for the opinion of the Association, and in reply beg to state as follows.

2. The Committee are of opinion that these Bills are decided improvements over the existing Acts, and are calculated to bring about the benefits enumerated in the Government Resolution, dated the 17th June last.

3. The Committee however, venture to make the following suggestions for the consideration of His Honour the Lieutenant Governor:—

Section 8 *of the Revenue Sale Law Bill.*—The Committee are of opinion that the notice therein prescribed should also be served on the attaching court and on the party at whose instance the attachment of an estate or share or interest in an estate has been made.

Section 9.—The notice prescribed by this section should also be affixed in the subdivisional office and the police station within the jurisdiction of which the estate may be situated.

Section 11.—The Committee think that the fines prescribed by this section are too heavy. A payment of 5 per cent., or $\frac{1}{20}$th of the amount of the arrear, would be quite sufficient.

Section 12.—Larger discretion should be given to the Collector of district for exempting estates from sale on payment of the fine prescribed by section 11, so that the provision of these sections may be administered with liberality. The Committee are of opinion that in some districts in Bengal the existing Revenue Sale Law has been administered sometimes with undue strictness, and has caused ruin to many old and ancient families, whose estates have fallen into the hands of money-lenders and upstarts.

Section 14.—The Committee suggest that after registration of the name of the person interested in the estate under the provision of this section, sale should not take place without giving notice by post to the registered applicant at least 15 days before the sale.

Section 15.—Deposits should be exempt from attachment of Civil Court as long as the estate remains the property of the depositor.

Section 16.—With reference to the last clause of this section, *i. e.*, "and the Collector *may if he thinks fit*, make such certificate, &c., &c,," the Committee beg to observe that it would be very hard upon the party to compel them to pay a full courtfee, and then to leave the matter to the discretion of the Collector. No court-fee should be paid until after the Collector has decided to make a certificate.

Section 17.—The Committee beg to suggest that the concession given by this section to the persons not being proprietors should be extended to that made by the provisions of sections 11 and 12.

Section 41.—Mere "inspection" would not be sufficient. The Collector should be empowered to make enquiry and to take evidence if necessary.

Section 47.—The Committee venture to suggest that the power given to Government under this section should also be conferred on the Board of Revenue.

4. The Committee have no remark to make on the other Bill.

No. 89A., dated Calcutta, the 7th February 1891.

From—C. E. Buckland, Esq., Secretary to the Board of Revenue, L. P.,

To—The Secretary to the Government of Bengal, Revenue Department.

The Hon'ble F. M. Halliday.

I am directed by the Board of Revenue to submit the following report called for by Mr. Maude's endorsement No. 2223-850L.R., dated 26th June 1890, on the subject of Mr. Beames' draft Bills to amend (1) the Revenue Sale Law, (2) the Public Demands Recovery Act, 1880. The sections of these Bills, which appear to require notice, will be dealt with in order, but minor matters and

verbal corrections will be grouped together. Unless it is otherwise stated or apparent from the context, the sections referred to are sections of the Bills under consideration.

THE BILL TO AMEND THE SALE LAW.

2 *General.*—The Board's attention has been drawn to the arrangement of the divisions of this Bill. As the operations in Part III are antecedent in time to those in Part II, the transposition of the two Parts has been suggested. On the other hand, there is some degree of advantage in stating the circumstances which entail the liability to sale before entering on the questions of protection and exemption. It seems to the Board hypercritical to object to an apparent incongruity in including in one Part such matters as Deposits, Separate Accounts, Wards' estates and Attached estates. They are all subordinate portions of the main subject of the Part. It is much more worthy of consideration whether section 14 should not be removed to Part III as being connected with the protection of an estate from sale.

The Board have also been reminded that, since the existing Revenue Sale Laws were passed, the Bengal Tenancy Act has made important changes in the Law of Landlord and Tenant, so that it would be desirable to have this Bill carefully examined to ensure that none of its provisions are in conflict with Act VIII of 1885. The right to eject all tenants under certain circumstances, as provided for in sections 57 and 58, is given as an instance for consideration. The Board presume that such an examination will be made in the Legislative Department.

3. *Section* 1.—It has been suggested that it would be more convenient to name the Scheduled Districts to which the Act is not to apply. Again, as the present Act XI of 1859 applies to Sylhet, which was formerly in Bengal but is now in Assam, it will remain to be settled whether the old Act should remain in force there or the new one when passed operate there also. If the new Act is to take effect there, this apparently would be beyond the powers of the Bengal Legislative Council.

4. *Section* 3 —"*Revenue.*"—It has been pointed out that this definition of "revenue" as it stands includes road and public works cesses, zamindari dâk cess, and dues for drainage and embankments. This is contrary to Mr. Beames' intention. The following might be substituted:—"Revenue is the sum payable annually to Government by the proprietor of an estate or independent tenure in respect of the land revenue thereof." The word "independent" has been inserted before "tenure," as the sale of these tenures is included in the Bill.

"*Tenure*"—The Collector of Backergunge is opposed to the exemption of raiyati holdings from this definition, and thinks it necessary that a Collector should have power to bring raiyati holdings to sale free of encumbrances in cases where the raiyats are able to pay but evade payment. Many of the raiyats in the khas mahals in his district are for all practical purposes tenure-holders. He would leave the law in its present shape, allowing the Board in its executive capacity to provide such safeguards against harsh action as may be considered necessary. The Commissioner concurs in these views, and the Board recommend that the power of selling such holdings be not taken away, *i.e.*, they would leave the law as it now stands.

"*Independent tenure.*"—The words 'not being an estate' in this definition are redundant, having already been used in defining 'tenure.' The words 'other than estates,' if restored into the definition of "tenure," have the same force.

"Board," "Commissioner," "Collector," will require modification if the Bill is to apply to Sylhet. "Commissioner" might be enlarged so as to include an Additional Commissioner appointed, as has been done in the Patna Division, solely for the disposal of revenue appeals. "Collector" should be amplified to include also the Deputy Commissioner of a non-regulation district. It would be a slight improvement in the direction of convenience if the definitions were rearranged in alphabetical order.

5. *Section* 8.—The Board have had their attention attracted to the fact that a circular of the High Court (No. 2 of 10th January 1871), which directs that all orders by all Civil Courts for the attachment of estates and

shares of estates shall be immediately notified to the Collector of the district within which such estates or shares are situated, has been very indifferently observed, with the result of affording grounds for delay in the payment of Government revenue, or for appeal against sales, and causing useless expenditure (which falls on Government if the estates are not sold) for the cost of service of notices. Collectors have long been enjoined to address the District Judges with a view to securing the observance of the High Court's order.

Board's Rules, Miscellaneous volume, 1888, page 188.

The Legal Remembrancer has called the Board's attention to section 274 of the Code of Civil Procedure, with the remark that a notice in the Collectorate is of the essence of attachment where the property is a revenue-paying estate. The Board have consulted the revenue officers on the question whether, after the words "any judicial authority," the words "notice of whichhas been received by the Collector" should not be inserted, as it seemed reasonable that a Collector should be authorized to sell up an estate if he has received no notice of its attachment. It has been rightly observed, among the replies received, that the omission of a court to do its duty can scarcely justify the withdrawal of a privilege conferred by law, and that the penalty for such omission should fall not on the proprietor, but on the official in fault. On the other hand, it is alleged that in the great majority of cases (in which estates are attached by judicial authority, the attachment is at the suit of money-lenders who are perfectly acquainted with the Revenue Sale Law, drain the proprietors of their resources, and then deprive them of their estates. Most of the officers consulted are in favour of some amendment of the clause with a view to facilitate the prompt collection of Government revenue. On the whole, the Board are of opinion that the insertion of the words "notice of which attachment has been received by the Collector from either (i) the judicial authority, or (ii) the proprietor, or (iii) the judgment-creditor" would give to everybody concerned the right of giving the notice in question, while they would justify the Collector in selling an estate if he had received no such notice of its attachment. Again, in some districts, as in Chittagong for instance, a proprietor frequently has no *cutcherry*, and the land of the estate cannot be pointed out. Before the words 'due service' therefore it would be desirable to add, "if the proprietor have no *cutcherry*, or if the officer charged with the service of the notification is unable to discover the land of the estate, he shall publish it in some conspicuous place in the village within which the estate is situated." As it would affect the working of courts and police stations if officers were liable to be summoned to give evidence in such matters, it would be well to provide that the certificate indicated near the end of section 8 should be evidence of due service without the oral examination of the certifying officers.

6. *Section 9—"Specifying."*—It was suggested to the Board that there should be some form of specification (of the estate or share to be sold) authorized by law to show, for instance, the tauzi number, the name of the estate, &c., and the proprietor, the Government revenue, the arrear due, the road cess annual value, or some of these particulars or others. The object of the proposal was to assist in securing at least a fair price for the estate, as this could presumably be better obtained by disclosure of the facts than by reticence. A form of notification of estate for sale has already been prescribed by the Board which states the tauzi number, the name of mahal and pargana, the sadar jama of the whole estate or share, whether the whole estate or a share is to be sold, the names of the proprietors, the arrears due from the estate or share. The officers consulted are almost unanimous that the specification of estates or shares to be sold should be left to executive authority, and that the number of particulars to be included should be limited to as few as possible, so that there may be less chance of irregularities and omissions which may vitiate a sale, and that the work of the Collectorate may not be increased. It is essential, of course, that sufficient information for the identification of the property to be sold should be contained in the notification; and intending purchasers may be left to themselves to ascertain such further particulars as they require. The Board would therefore leave the specification to be prescribed by executive authority, and they would only propose to add to the details already given the road cess valuation of the estate or share. They would be glad if it could be provided that mistakes in the details of the specification in the notification should not be held to amount to an irregularity under section 76 of the Bill.

7. *Section* 10.—One of the Commissioners has stated that one of the most frequent grounds urged in appeals against sales is that the provisions of this section have not been duly observed. The High Court has, however, held (*Gobind Chundra Gangopadhya Sherajunnissa Bibi*, 13 C. L. R.. I.) that the neglect of the provisions of this section would not invalidate a sale otherwise properly held. In his connection he has called attention to section 46 (*a*) of the Bill, and suggests that the conduct of a sale in "strict accordance with *all* the provisions of this Act" would include the proper issue of the proclamations under section 10. In the face of the High Court's ruling, and having regard to the little connection there is between the notice to the raiyats and the conduct of the sale, the Board do not attach much weight to this criticism. But it might be well to limit the expression in section 46 (*a*) to "all the provisions of this Act regarding the conduct of sales." A similar proviso is also required, with regard to the posting of the proclamation and alternative posting in the village, to that proposed in paragraph 5 above in respect of section 8 of the Bill. It has been suggested also that the words "raiyats and under-tenants" should be changed to some more comprehensive expression. Under-tenant is a term not defined in the Bengal Tenancy Act. The Board would propose to substitute the words "all persons liable to pay rent to him" as sufficiently wide and clear.

8. *Section* 11.—The first objection taken to the principle of this section is a fundamental one. It is pointed out that by requiring the Collector to accept payment of the arrear with a penalty up to the sixth day before the sale-day, the defaulter is allowed as of right a second last day (as it were) of payment, and that this is opposed to all previous legislation and very different to the exemption by grace which is now permissible under section XVIII of Act XI of 1859. The Commissioner of Orissa especially considers that it would be bad policy to give defaulters a right to escape the consequences hitherto involved by default of payment on or before the kist day. The question at issue is one of principle, whether to maintain the present system which admits of considerable variety in practice and in the exercise of the discretionary powers of Collectors, or to establish a rigid and uniform system by which Collectors must be guided, to the exclusion of their discretion, save in very special cases. The Board are of opinion that the present system has been found wanting, and that the infliction of the proposed penalty will put the sixth day before the day of sale on quite a different footing to the kist day. They would therefore support the principle of this new section; a return to the plan of levying a penalty, which was formerly allowed (as will appear from a perusal of paragraph 71 below) by legislation long since repealed, is justified by the misinterpretation by proprietors of the policy of leniency which has obtained for some years past.

The Legal Remembrancer has expressed his disapproval of the alteration which this section introduces into the law; at the most he would allow the Collector to receive the arrears of revenue together with a penalty as a matter of indulgence, not as of a legal right. But another objection, of an arithmetical character, which has been taken to the proviso to section 11, is fatal, and cannot be disregarded. It can easily be perceived that, according to that section, if one proprietor defaulted for Rs. 5,000, he would have to pay an additional sum of Rs. 1,250 as penalty, while according to the proviso, another proprietor defaulting for, say, Rs. 6,000, would be penalized to the amount of Rs. 750 only. There would obviously be a want of equity in such an arrangement, whereby the lower penalty would be attached to the higher default. Various suggestions have been made to meet the difficulty. The essential point is that the penalty should be of a substantial and deterrent amount. Objections can be taken to any scale arbitrarily fixed. The Board would suggest the following as simple and likely to be as effective as any other plan:—

Arrear.	Penalty.
Up to Rs. 5,000	25 per cent.
5,001 and upwards ...	25 „ on Rs. 5,000. and 6¼ „ on the remainder;

and, in all cases in which the arrears are less than Rs. 4, one rupee should be required as the penalty. This minimum penalty is required to check the growing evil of deliberate default, generally resorted to by co-sharers in cases of very

small revenue payments. Another change advocated is that Collectors should be allowed discretion to exact a penalty, but that there should be no right to defaulters entitling them to pay up arrears with a penalty added. The Board consider it most important that, if this concession of a payment subsequent to the kist day be allowed, there should be no discretion or option allowed to the Collector, and that the rate of the penalty should be absolutely stereotyped in the Act. The same view was held by Mr. Reynolds in paragraphs 14 and 15 of the Board's letter No. 133A., dated the 12th February 1889. Section VIII of Regulation VII of 1830 authorized the rate of 25 per cent. to be levied for penalty and interest on arrears. It is a matter for further consideration whether interest on the arrears should not also be levied in addition to the penalty now proposed.

The Commissioner of Orissa considers that the circumstances of defaults vary so much that it would be unjust to inflict a uniform rate of penalty in the great majority of cases, and that in Bihar the new provisions might be mischievous: he proposes, therefore, a minimum fine of 5 per cent. on the arrear, with authority to the Collector to enhance it up to 25 per cent. according to circumstances, and to the Commissioner to revise an order imposing a penalty exceeding 10 per cent. Another suggestion is offered that there should be a second proviso to the effect that a Collector may, with the sanction of the Commissioner, when satisfied that the default was not due to negligence or circumstances over which the defaulter had control, remit and refund the penalty in whole or in part, recording his reasons. The Board cannot accept these views. Nothing would be gained by substituting a permission to the Collector to use his discretion in one respect for the similar power which he now possesses in another respect. It is also a common practice for Collectors acting under section XVIII of Act XI of 1859 to require, before granting exemption, the payment not merely of the land revenue up to date of exemption and of the costs, but also of all other public dues, such as road cess, public works cess, zamindari dâk. Provisions should certainly be made for the continuance of this practice. This can easily be effected by introduction into section 11 of the Bill after the words "arrear of revenue" in line 6, such words as "and all other public demands and costs in full," so as to make the payment or tender of them a condition precedent to the exemption of the estate from sale. There is no reason why these demands should be foregone when land revenue in arrear is accepted.

It has been also noticed that the Collector is not prohibited by the language of the section from exempting the estate from sale, even though no penalty be paid. The words "but not otherwise" if added in line 12 would probably put the matter beyond all doubt. It would also be desirable to limit the power of paying up arrears, and it might be provided that only recorded proprietors and registered tenure-holders should be regarded as persons interested and authorized to do so.

The Board would also propose that an illustration should be inserted to show how the calculation of the "sixth day before the sale" is to be made, as it might be useful to prevent objections and complications. For instance, if the 15th of the month is the sale day, the sunset of the 9th instant would, in the Board's opinion, be the sunset of the sixth day before the sale. The point seems sufficiently obvious, but some persons might argue that it should be the sunset of the 8th instant, so as to leave six clear days between it and the sale. It should also be provided, as in section 44 of the Bill, that, if the sixth day before the sale is a Sunday or other close holiday, the arrears would be accepted up to sunset of the fifth day before the sale.

9. *Section* 12.— This section has been criticised in two respects. It is urged that, whereas one of the objects of section 11 is to relieve Collectors of the embarrassing responsibility of deciding when exemptions should be granted, this section reintroduces the embarrassment. Applicants for exemption can easily invent special reasons, or plead that their cases are of an extreme character; and, as has been remarked, it is so difficult for a Collector, with the limited time at his disposal, to test the pleas advanced that the evils of the present system will be still retained to a modified extent. It has been suggested that the section might be amended, either by leaving it to the discretion of the Collector to inflict a penalty up to the maximum to be allowed, or by doubling the penalty provided in section 11 and leaving the

Collector no option except that of subsequently remitting or refunding the penalty after it had been paid. The Board are altogether averse to this last idea, as applications for remissions and refunds would invariably be made, and the cases hereby reopened. The object of this section should be, in their opinion, to test how far the cases submitted under it are really extreme. It appears to be impossible to define what constitutes an extreme case. A financial test is the best, if not the only one, that can be applied. The Board would therefore provide that the additional sum to be paid as penalty under this section shall (besides the payment of all public demands due on account of the property in question) be double the penalty to be required under section 11; and they would fix this as firmly as they have proposed to stereotype the terms of section 11. The other main criticism offered is that no payment whatever should be allowed on sale day. The confusion and inconvenience which are caused by the power that defaulters have of tendering arrears up to the very commencement of a sale are notorious, and it is very desirable that the sale proceedings should not be disturbed by the efforts and clamours of defaulters demanding permission to pay at the last moment. The Board would therefore recommend that the acceptance on the sale day of any payment of any sort on account of arrears or penalty or interest, with a view to the exemption of an estate from sale, be absolutely prohibited. There would then be four important stages in connection with the payment of each kist of land revenue—(the kist day, 12) the sixth day before the sale day, 3) the five days before the sale day, (4) the sale day. Corresponding to these stages there would be a graduation of penalties from nil to the climax at which no amount of penalty would be sufficient. It would not be reasonable for proprietors to expect greater facilities, and the Board do not feel sure that they are not, as it is, supporting too complicated a system. When all is said and done, and the law is made as strict as possible, it will always be open to defaulters to apply to Government for refunds and remissions of penalty, unless the law is so framed as to render the Collector's or Commissioner's action final. The words "when he considers the adoption of such a course necessary" appear to be redundant; and for "the period indicated in the foregoing section" it would be well to substitute "sunset of the sixth day before the day of sale," which is really meant.

10. *Section* 14.—The history of this section dates back to Sir Richard Temple's minute of the 26th August 1875. The circumstances which gave rise to its introduction in the Bill are set forth in paragraph 12 of the Government of Bengal's letter of 28th September 1889, to the Government of India. In spite of what was stated there and in Mr. Beames' notes on this section, various objections have been offered to it. It is said, for instance, to be unnecessary in the case of (single) proprietors; that it can be possibly required only in the case of numerous co-sharers; that the work of the Collectorates will be enormously increased; that new grounds of appeal will be afforded; that Government is undertaking business which belongs to the parties concerned; that the increase in the number of notices will diminish the security attaching to an auction-sale certificate; that the fee should not be uniform alike for persons paying in one or four instalments. The Board are not prepared to say that there is no force in these objections, and they are disposed to think that the matter might be left (though this was not the view held by Mr. Reynolds in paragraph 11 of the Board's letter No. 133A., dated 12th February 1889) to be dealt with by executive order, as, indeed, it has already been by the issue, in some districts, of post-card notices. It is entirely within the competence of a proprietor to know for himself whether his estate is in default or not, and the recommendation of the British Indian Association, from which this section originated, appears to have been made solely in the interests of absentee landlords. It must be distinctly understood that the registration of a name and address implies no transfer (as *e.g.*, from the zamindar to a patnidar) of the liability for the revenue of the estate. The levy of fees under this law might be authorized by a general section. It is doubtful whether great use would be made of the provisions of this section, and extra establishments to be paid from the fees could be entertained to cope with any work it might entail. The chief danger lies in the possibility of an important matter like a sale being invalidated by a defect in the petty matters of these notices to

persons interested. If the section is to be retained, it would be better to omit the words from "if it be proved" to the end. It is reasonable also that the privilege conferred by this section should be restricted to those who have registered their interests under the Land Registration Act. After "of which it is made" should be added "or give a description sufficient to identify the independent tenure to which it refers" and after "of such estate" should be added "or independent tenure." In the place "of tenure-holder" should be substituted "holder of any tenure or independent tenure." Another reasonable suggestion has been made that the notices under this section should be posted within a certain time after the occurrence of the default, so that the persons interested may have time to save the estate from sale.

11. *Section* 16.—Two very diverse opinions have been offered on this section. One Commissioner anticipates that it will be popular and work well, another expects it to be used as an offensive weapon among hostile co sharers. The Legal Remembrancer, the Board notice, is opposed to this section on the ground that it applies the Certificate Procedure to the recovery by private parties of their ordinary debts by a summary method intended only for public demands. The Board would certainly retain it, although section 49 of Act IX (B.C) of 1880, which it follows, is said to be inoperative. It is very common practice, at least in one district, for the petty shareholders to withhold payment, and thus force the large shareholders either to pay the whole revenue or let the estate be sold, and in some cases the larger have paid for the smaller for years, and borne the loss rather than incur the expense of resorting to the Civil Court. It is urged that the opening of a separate account already affords adequate protection to shareholders; but there is no necessity to force shareholders to open separate accounts, should they not desire to do so. Nor is it necessary, as has been proposed, to provide for references to the Civil Court of disputes as to extent of shares. The recorded amount of the shares ought to be conclusive in all ordinary cases. But if the payment of a penalty on default is to be legalized to save an estate from sale it would be allowed to a shareholder to receive any excessive proportion of the penalty as well as of the revenue paid by him under this section. It should also be provided that a shareholder may proceed against more than one other shareholder in one certificate, specifying their separate liabilities.

12. *Sections* 19—29.—It is desirable that the fact should be recognized that one separate account cannot be opened without opening at least two separate accounts, namely, that of the applicant's share and that of the residuary share. If A holds 4 annas and B 12 annas in an estate, and A applies and has a separate account opened, this involves the opening of a separate account for B although the latter has made no application. Thus section 29 is as applicable to B, as to A, though B is not included in the definition of an "applicant" (section 22) for a separate account. The latter part of section 22 might run as follows:—

"The Collector shall open separate accounts with the applicant and with the residuary shareholder or shareholders of the estate or share of an estate or independent tenure, and shall credit separately to the sharers all payments made by them respectively on account thereof."

If the specification to be furnished, some particulars should be required to be given sufficient for the easy identification of the share in the Collectorate records. But it might be left to the rules to be framed under the Act to provide for these details.

13. *Section* 24.—Mr. Beames has proposed to add a provision at the end of section 24 of his Bill to the effect that no separate account is to be opened in respect of any share the revenue which is less than one rupee. As much practical inconvenience has been found to arise from opening separate accounts for extremely small shares, this provision has, Mr. Beames explains, been introduced to prevent such cases from occurring. Before his Bills were received by the Board, the Collector of Hooghly had drawn their attention to the working of sections X and XI of Act XI of 1859 and section 70 of Act VII (B C.) of 1876. He brought to notice the minute subdivision of shares that is taking place in his district, and the introduction into the list of sadar malguzars of a class of men paying only a few annas Government revenue, a class which in giving instances) he described confidently as being rapidly on the increase. He raised the question whether Government ever contemplated

such a state of things, and whether it should be in the power of such insignificant sharers to jeopardize the interest of their co-sharers by default of payment of revenue. He mentioned a case in which the Government revenue has been reduced to one anna per annum payable in four instalments, and alluded to several other cases not less ridiculous. He pointed out, moreover, that the evil is aggravated when co-sharers have to be dealt with for road-cess purposes, as under section 44 of Act IX (B. C.) of 1880 the road cess has to be divided rateably among sharers who have opened a separate account. With the object of checking the tendency to increase the Collectorate work in the interest of such very insignificant shareholders, Mr. Cooke suggested that, following the analogy of the Batwara law, a limit might be placed on the extent of the interests to be recognized by the Collector, and a separate account allowed only when the Government revenue of the share is one rupee and upwards. The Board have enquired from the Commissioners of Divisions whether such minute subdivision of estates is prevalent to an inconvenient extent, and what remedies they would propose. The result of this reference has been that, with a very few exceptions, the District Officers concur in recommending that the limit of separate accounts should be fixed at one rupee Government revenue. In some of the districts the number of separate accounts opened for less than one rupee is not yet so large as to entail any serious inconvenience; but in the following districts the petty shares separated and paying revenue less than a rupee a year are already so numerous as to be troublesome:—Pabna 236, Chittagong 168, Noakhali 115, Tippera 106; in the three districts Dacca, Faridpur and Backergunge 289; in the Patna Division there are as yet only 658 such small separate accounts; in Monghyr 83 such accounts have been opened in two years. The multiplication of accounts of a petty character throws much additional labour on the establishments, and increases the responsibility and labours of the staff engaged in the collections. Exceptions have, however, been taken to some of Mr. Cooke's arguments, and these deserve examination. Some officers have pointed out, and the Board think rightly, that the fear expressed by the Collector of Hooghly, that the opening of separate accounts for petty shares jeopardizes the interest of the co-sharers, rests on no valid grounds. As Mr. A. Smith writes:—"The opening of the separate accounts will really make the interests of the other shareholders safer than before. On the other hand, prohibition to open the accounts will deprive the owners of the petty shares of the protection which the separate account gives against their more wealthy and powerful partners. Experience shows that the small sharer goes to the wall in cases of the kind much more often than the large one." The argument against the opening of shares for petty amounts drawn from the analogy of the Partition Act has been combated on this ground, that there is an important distinction between the two cases, viz., that in partitions the proprietor whose share pays less than one rupee of land revenue can still have it divided off and made over exclusively to himself by agreeing (under section 11, Act VIII (B. C.) of 1876) to redeem the land revenue, whereas the refusal to open a separate account leaves the petty proprietor no other means of securing his share from the risk of being sold up for the default of any of his co-sharers. The objection that there should be a preliminary partition of the assets in such a way as will secure the revenue is fatal to allowing a redemption of the land revenue of a separated share of a joint estate, whether the estate is held on joint tenancy (section 19 of the Bill) or the share consists of a specific portion of the land of an estate (section 20). The Board cannot recommend that the redemption of the land revenue on a separated share be allowed without a separation of the assets, that is, in other words, without batwara proceedings. Setting aside, then, the idea of redeeming the revenue of separated shares, when less than a rupee a year, other suggestions are offered to the effect that the inconvenience caused to the Collectorates by having a large number of separate accounts for petty shares might be greatly reduced by fixing only one kist annually for the payment of revenue of all shares paying Rs. 10 or less, as in the case of entire* estates, or that the revenue for two years be paid in one instalment, say at the January kist in the first year. The objection to this plan is that constant changes would be necessitated in the tauzi accounts of estates and the

*Board's rules, Miscellaneous Vol, 1884, page 184

instalments of sharers who not apply for separate accounts, which in the end might prove more troublesome than the present state of things. The conclusion appears to the Board to be that, it is true, the acceptance of Mr. Beames' proposal would so far deprive the very small shareholders of the power of protecting their shares from the sales which may be brought about by unscrupulous and richer co sharers for the very purpose of turning out the poorer sharers from the estate. On the other hand, must be set the labour and inconvenience involved in the facilities for subdivision afforded by the existing law for which no adequate return is obtained by Government. The same argument applies to the opening of separate accounts for petty shares which has been advanced* against allowing partitions to be effected beyond a certain limit, namely, that intolerable harassment, labour and expense are imposed upon the officers of Government. The fees demandable under section 3 of Act III (B. C.) of 1862 on applications under sections X and XI of Act XI of 1859 are evidently not prohibitive, and it is a question whether fees can be levied under section 70 of Act VII (B. C.) of 1876. No charge is made for the work of the Collector, the Commissioner, and the Board, and the result is a permanent increase of expenditure and work in the revenue offices without any proportionate benefit to anybody. The Board consider that Government have an undoubted right to consult the public and official convenience in such a question, even though it may be regarded as involving the withdrawal of a certain power of protecting their interests from the holders of the smallest shares in an estate. It will always be in the power of recorded proprietors or shareholders to avail themselves of the provisions of section 16 of the Bill, which will afford them protection, although no separate account has been opened. The Commissioner of Chittagong appropriately refers to section 88 of the Bengal Tenancy Act, which has settled that "a division a of tenure or holding, or distribution of the rent payable in respect thereof, shall not be binding on the landlord, unless it is made with his consent in writing," and argues that as zamindars are thereby protected against excessive subdivision of rent, the Government should not be in a worse position in respect of revenue. There is great force in this comparison. He would go so far as not to allow the opening of a separate account if any share fell below Rs. 5. This might be a desirable measure, if practicable; but the Board apprehend that there would be little chance of such a proposal meeting with acceptance, and they think it will be sufficient for the present, unless further experience shows a higher limit to be required, to adopt the limit of one rupee of revenue for separate shares, as entered in section 24 of the Bill. It should also be provided that, when an application for a separation of account is made, it shall not be allowed if the revenue of the residuary share, which would be formed by the grant of the application, would be less than one rupee.

* Board's No. 765 A., dated 24th September 1890.

In this connection it may be mentioned that, when the Bill which became Act XI of 1859 was before the Legislative Council, the Bengal Government of the day proposed that the benefit of separate payment should not be extended to any share the revenue of which did not exceed fifty rupees. The proposal was not adopted by the Hon'ble Mr. (afterwards Sir) J. P. Grant in charge of the Bill, as explained in Council on the 22nd December 1855. But circumstances have changed considerably since the Select Committee reported on section IX of the Bill referred to on the 16th April 1859. Their main object apparently was to encourage the opening of separate accounts rather than recourse to partitions of estates.

14. *Sections* 25 *and* 27.—A suggestion is offered that, under these sections and the corresponding section 55, the Collector should be authorized, instead of suspending proceedings, to strike the case off his file with liberty to the parties to revive it by petition after the Civil Court proceedings have been concluded. The object of the suggestion is to prevent the returns of the Collector's offices from being hampered by the delays of the Civil Court as in Land Acquisition cases. The commencement of proceedings in the Civil Court is left to the discretion of the parties, who are likely to be dilatory. The Board do not attach much importance to the point, but mention it as a small matter affecting the work of the Collectorates. Under section 24 of Act VIII (B.C.) of 1876, certain proceedings in partition cases may be postponed for four

months, but the cases are not altogether analogous, and it seems better not to fix a definite time in this case.

15. *Section* 26.—The language of this section requires alteration, as it does not appear correct to speak of an interest held jointly by one proprietor. It is based on section 72 of the Land Registration Act, VII (B.C.) of 1876. The simple change required is to substitute "two" for "one" in line 7 of the section, so as to bring it into conformity with the section which it follows.

16. *Section* 30.—A provision for case of no bid being made is required in this section similar to that in section 87. In line 3, after "section" the words "there be no bid or if" should be inserted. A Commissioner reports that such cases have frequently occurred within his experience, and the absence of the proposed addition prevents the adoption of the procedure of this section.

17. *Sections* 37 *and* 38.—The Commissioner of the Presidency Division observes that the attachment under the Public Demands Recovery Act (section 10) being an attachment by a revenue and not by a judicial authority, the explanation which follows section 38 should come after section 37. Mr. Beames' notes show that he has followed a ruling of the Board which was given in 1885. The point whether the explanation should follow section 37 or section 38 is one for the legal advisers of Government to settle. The Board are inclined to agree with the view expressed by Mr. Smith.

18. *Section* 41.—Several objections have been taken to this section. The first few words "on the day of sale" have been challenged on the ground that heavy work will be entailed on Collectors on the very day when they are most busy and have least time to spare There is no reason why the examination of the documents should necessarily be delayed until the sale day, and, if the sales are numerous, Collectors will be unable to make the examination in one day, and will be compelled to adjourn some of the sales. But adjournments should be avoided if possible. A simple remedy may be effected by substituting the words "on or before the day of sale."

It has next been considered whether the Collector should not be required by law to satisfy himself that there is an arrear. To be of any value this would entail a reference by the Collector to the tauzi in each case, and an examination into the accounts of each estate. The present practice is for a defaulter's list to be prepared by the tauzi department after a kist, and upon this list the Collector takes action. Mistakes are not often made in the preparation of this list, but are due to payments having been incorrectly credited owing either to pressure of work or to the incorrectness of the payer's chalans. Some of these few mistakes might come to light if the Collector were bound to make a personal enquiry into the existence of each arrear, but the work may very well be entrusted to subordinates (as it has long been) without any serious harm, and it is an object to avoid multiplying in the sale law grounds for setting a sale aside. The Board would therefore not recommend that the Collector shall be required by law to satisfy himself by personal inspection of the existence of an arrear. He may be trusted to take all possible precautions that only estates in arrear are entered in the list of defaulters. More serious objection has been taken to the provision which requires a Collector to satisfy himself by personal inspection of the returns of service that all notifications and notices required by the Act have been duly issued and served, and then to record his attestation of the fact. It is pointed out that if this section becomes law, a Collector will ordinarily sign the reports submitted to him by a sarishtadar or other ministerial officer, as it will in practice be impossible for him to satisfy himself personally that all the notices have actually been *served*. A Collector cannot be expected to record such an attestation merely on a peon's word or report. If the Collector is to go behind the peon's report of service and take evidence (if the correctness of the service is impugned), he will be overwhelmed with such work. All that a Collector can at the utmost be expected to certify is that the notices, &c., have been duly issued, and that they purport to have been duly posted and served, and he should be authorized to give this certificate (in other words, make this attestation) on personal inspection of what will in practice be called the office *kaifiyat* in each case. It would be a mistake to make the Collector directly responsible for purely clerical or mechanical work; in some districts it would be almost impossible to carry out such a provision. It must be borne in mind that the labour which it is proposed to impose upon the

Collector by law may amount to a serious addition to his duties. Under sections 8 and 22 at least five notifications are required: under section 9 two, and possibly three: under section 10 at least five proclamations: under sections 13 and 14 the notices may be very numerous. Action under all these sections will of course not be required in every case. But, having regard to their number and the details to be observed, the Board apprehend that the labour involved in a personal inspection sufficiently thorough to justify the Collector in signing the attestation would in a heavy district be a very serious matter. The notifications, &c., required by the sections mentioned are not of equal importance. It has already been stated (paragraph 7 above) that the neglect of section 10 does not invalidate a sale. In Lala Mobaruk Lal's case it was pointed out that the ruling under section VI of the Act does not apply to its section VII (section 10 of the Bill . It has been suggested, therefore, that only the service of the notifications in section 9, and of those under section 8 (where that section applies) should, if section 41 is to be retained, be declared to be essential to the validity of a sale, and necessary to be certified as having been correctly served, irregularities in the cases of notifications, &c , under sections 10, 13, 14 and 22 being treated as immaterial. Again, it has been observed that, if sections 8 and 41 are both retained as drafted, the notifications prescribed by section 8 would be included in the attestation. But the attestation could not properly be regarded as conclusive evidence under section 52, because there might be an attachment of which the Collector had no knowledge. The Collector's attestation could be challenged by proof that there was such an attachment, it being admitted that the notifications under section 8 were not published. The Board having considered this difficult matter are of opinion that some provision, such as that formulated in section 41, is required in order to prevent the recurrence of such cases as that of Lala Mobaruk Lal. But they are averse to holding Collectors responsible for personal inspection of a number of details of the description in question; the work would either not be done, or would seriously hamper the Collectors. They think that an attestation to the following effect would be sufficient:—

I attest hereby that all the notifications, notices and proclamations required by sections 8, 9, 10, 13, 14 and 22 in the case of the sale of estate tauzi No. for arrears of revenue are reported by the Collector's establishment to have been duly issued, and to purport to have been duly posted and served.

C. D. A. B.

Deputy Collector. *Collector of*

The Collector of the 24-Parganas has also put forward a proposal which the Board would desire to support. He would give the Collector himself power to cancel a sale for any material irregularity in the service of a notification, &c., &c., in the same way as the Civil Courts are empowered to act under section 311 of the Code of Civil Procedure. The expense, delay, and trouble to which the parties are subjected by resort to the more distant tribunal would thus be avoided. This action of the Collector might be open to appeal to the Commissioner, whose decision might with advantage be made final by law and, if the attestation is made conclusive proof, all that is possible will have been done to preclude the interference of the Civil Courts with sales for arrears of revenue. The Legal Remembrancer expects little benefit from section 41 as a means of excluding the interference of the Civil Courts. He would take the present opportunity to consider the High Court's decision in Lala Mobaruk Lal's case and to distinctly negative the principle therein laid down, which practically repeals the provision in section XXXIII, Act XI of 1859 (requiring any suit for reversal of a sale to be brought within one year). In his opinion the Civil Courts should have no power to go into the question of regularity or irregularity, but the revenue authorities should deal with such matters directly after the sale and have the final decision. This is practically identical with the Board's recommendations in this paragraph and in paragraph 29 below.

19. *Section* 42.—This section does not provide for the order in which independent tenures should be sold. They should be sold according to the number they bear on the Collector's register (see the Second Schedule of the

Bill), beginning with the lowest number. This should be provided for by law and the words "share of an estate or independent tenure" inserted after the word "estate" in two places in this section.

20. *Section* 43.—A Commissioner has proposed that time for the deposit of the 25 per cent. on the amount of the bid should be allowed only until the next lot is called up; on the ground that if this time is exceeded, the lot cannot be sold "forthwith" in case of default. The Board agree with the suggestion that either the word "forthwith" should be omitted or some limitation, such as that above indicated, be imposed.

21. *Section* 44.—In Government order No. $\frac{3}{96}\frac{12}{}$L. R., dated 24th January 1890, it was ruled that Collectors should be directed not to give possession, under section XXIX of Act XI of 1859, until the stamp fee payable for a certificate under section XXVIII thereof has been deposited; and orders have been issued accordingly. The Government letter at the same time directed that when the law is amended, provision should be made for the deposit of the requisite stamp fees with the final instalment of the purchase-money payable under section XXIII of the Act: so that the Collector could then proceed *suo motu* to give a certificate under section XXVIII and deliver possession under section XXIX. The present opportunity may be taken accordingly in section 44 of the Bill, which corresponds with section XXIII of Act XI of 1859, to carry out these orders. When the purchase-money and stamp duty have been paid in full under section 44, it can hardly be supposed that the purchaser will fail to apply to the Collector under section 50.

22. *Section* 45.—It should be enacted that payment of the arrear by or on behalf of the proprietor must distinctly include payment also of the 'additional sum' mentioned in section 11. If this is not done, a defaulting proprietor may escape the prescribed penalty by purchasing *benami*, neglecting to make good the purchase-money, and stopping resale by depositing the actual amount of the arrear of revenue only; under the section, as drafted, this is all that he is required to do.

It is right to mention, however, that a contary opinion has been advanced on the ground that "it seems expedient to let the old proprietor resume if the wishes," but there appears to the Board to be no reason why the defaulting proprietor should escape payment of the penalty. If this view does not commend itself, he should certainly be required to pay such costs as have been incurred by Government in consequence of his default.

23. *Section* 46.—A doubt has been expressed whether the extension to any persons injuriously affected" of the right to appeal is not unnecessarily wide and likely to open the door to vexatious proceedings. It might be held to include not only all persons referred to in section 14, but also those who might be affected by sections 57 and 59, so that the number of possible plaintiffs in suits under section 76 would be indefinitely multiplied. It is also pointed out that there is no provision (such as the Collector's register in the case of recorded proprietors) for testing the *locus standi* of a third party claiming to have been injuriously affected. On the other hand, the Board feel that the law which as at present interpreted, prevents all persons, other than proprietors who may be injuriously affected by a sale, from obtaining any redress, cannot be left in its present state. At the same time it appears desirable that the right of appeal should be limited to persons of the classes described in section 14, as 'interested in an estate.' The necessity of proving substantial injury and the cost of preferring the appeal may be relied upon to keep down the number of such appellants to those who have genuine grievances requiring redress. The right given by this section to an aggrieved person to appeal to the Collector *or* to the Commissioner raises a point which for practical purposes should be settled. If an application is made to the Collector on the 61st or 62nd day after the sale for a certificate of title, a question would arise as to the action which he should take if he does not know whether or not an appeal against the sale has been preferred to the Commissioner direct between the 45th and 60th days after the sale. If it were provided by law that no appeal should be preferred direct to the Commissioner, but that all should be transmitted to the Commissioner by the Collector, there would be no chance of a Collector being ignorant of the fact of an appeal having been made to the Commissioner. The officers consulted are generally in favour of providing that all appeals to

the Commissioner should be filed before the Collector for transmission to the Commissioner. This appears to the Board the simplest course and the most conducive to despatch of buisness, as it can be ordered by a rule that in forwarding the appeal the Collector at the same time shall furnish his report upon it. If this is adopted, the period for presenting the appeal to the Collector (for transmission) might be extended to 60 days. If, on the other hand, the law be passed as it stands in the Bill, it would be necessary to forbid the Collector by executive order to issue a certificate under section 50 without first ascertaining whether an appeal had been preferred direct to the Commissioner and was still pending.

In paragraph 18 above, dealing with section 41, a proposal was made to allow Collectors to deal with certain objections to sales on the analogy of the Civil Courts. If this is accepted, section 46 will have to be recast, and the Collector should be allowed to award compensation as the Commissioner is empowered to award, and his order on the point as well as in respect of the sale may be made appealable to the Commissioner. It is always desirable to have on the record the views of the Collector on every point.

The next question raised is whether the words in brackets, viz. ("in cases where the appeal has been made by the proprietor"), should stand as part of the section. Mr. Beames in his notes has given his reasons for their insertion. On the other hand, several officers have represented that the auction-purchaser is as equitably entitled to receive compensation from the proprietor in cases in which the appellant is a third party as in those in which the appellant is the defaulting proprietor. The default out of which the injury accrued to the third party was the proprietor's, and he is thus primarily responsible. The Board would remove the words in brackets. Some objection has been offered to the rate of interest, 12 per cent., which it is proposed to exact. The Board think this a very desirable alteration, and concur with Mr. Beames' views on the point.

In the last line of the section as it stands, it would probably be held that the expression "in such cases" only refers to the cases where the appeal has been made by the proprietor. But if the Commissioner's order is to be final in cases where the appeal has been made by the proprietor: it *primâ facie* ought to be final in cases in which the appellant is not the proprietor: presumably the defaulting proprietor's interest is the most important in the estate. If the Board's proposal to omit the words in brackets is accepted, there will be no ground for making a distinction between classes of cases. But in either alternative, whether the words in brackets are omitted or not, the Board think, and all the officers consulted agree in this, that the words "all cases under this section" should be substituted for "such cases." It will be a light improvement if the word "and" in the last sentence be omitted and the words "the order of the Commissioner shall in all cases under the section be final" be made a sub-paragraph.

A reference to the Board's letter No. 749A., dated the 20th September 1890, to your address, will show that it is possible for a Collector to be kept by his office in ignorance of an appeal having been made to the Commissioner in a revenue-sale case. The result in the case indicated was that the Collector passed orders declaring the sale final, when he ought not to have done so.

24. *Section* 47.—A Commissioner has observed that under this section a sale is liable to reversal on the ground of hardship alone, whereas under section 46 an appeal is admissible on the allegation that the sale has not been conducted in strict accordance with all the provisions of the law. This leads in practice to allegations that notices have not been duly served or that other irregularities have occurred. He would allow an appeal on the ground of hardship where, in fact, the notices have all been in order, and there has been no material irregularity. The Board see no objection to this proposal. It would bring matters to the real point without waste of time over pleas put forward merely to get the appeal heard.

It is also suggested that a Commissioner might be empowered to dispose finally of such appeals (on the ground of hardship) as well as under section 46, though it is admitted that some benefit and more uniformity are derived by requiring the confirmation of Government. Though the present practice entails some trouble, delay and expense, the Board would retain it, as hardship is an indefinite

term, and the guidance of Government in its interpretation is important. Another amendment which the Board submit as worthy of consideration, is proposed as follows. The appellant not being necesarily the defaulting proprietor, it seems probable that, in cases where he is not so, the defaulting proprietor may not consent readily to make the deposit, and final disposal may thus be delayed. It will be better to let the appellant make the deposit, and empower him to recover by the certificate procedure from the proprietor. The deposit should cover the Government revenue and other public demands on the estate up to date, including the arrears for which the sale was held, all costs incurred by the Collector, and interest on the purchase-money estimated up to the probable date of payment. These being deposited, the Collector will have secured the interest of Government, and will be in a position to refund the purchase-money when orders are passed As the section stands at present, costs are not secured.

25. *Section* 48 —There is considerable difference of opinion with regard to the rate of interest to be allowed on the purchase-money returned. The Legal Remembrancer considers it to be rather a commercial than legal question. The reason for the increase of the rate of interest, from the highest rate for current public securities to 12 per cent., given in paragraph 30 of Mr. Beames' notes, viz., that money cannot ordinarily be borrowed in these provinces at less than 12 per cent., does not apply to Government, who can borrow at 4 per cent. The Board have therefore felt doubtful whether Government should pay at the rate of 12 per cent, as provided in this section and in section 78. Those who advocate the retention of 12 per cent, as drafted in the Bill, say (i) that the question is—" What loss has the purchaser sustained?" and not, " at what interest can Government borrow money?"; (ii) that the rate of interest at which the purchaser can borrow is the criterion; (iii) that the innocent purchaser's claim is the same, whoever may be responsible for the irregularity. On the other hand, there is only an assumption that the purchaser has borrowed at the high rate of 12 per cent., whereas in parts of the country large amounts can be borrowed on good security at 8 or 9 per cent., and the speculative borrower ought not to be encouraged, and it is entirely his own business if he borrows at high interest to purchase an estate. It cannot be denied that Government can borrow at 4 per cent., and, by section 42 of Act X of 1870, 6 per cent. is the rate allowed in land acquisition cases. Some officers would therefore limit the rate in this section to 6 per cent., and others would allow a maximum of 12 per cent., leaving each case to the discretion of the Commissioner. The Board do not at all approve of the suggestion last mentioned. Nor can they recommend the adoption of 12 per cent. for payments by Government; it might happen that Government would thus be called upon to pay at a higher rate than that at which the purchaser had borrowed. They would advocate the retention of the rate now allowed by section XXXII of Act XI of 1859 in the cases of payment by Government. But the case will be altered if the suggestion thrown out in the last paragraph is accepted, viz, that the appellant should make the deposit. In that case 12 per cent. might be substituted for the existing rate, as the pecuniary transactions would be entirely between parties other than Government, and the fact of Government being able to borrow at 4 per cent. and only paying 6 per cent in certain cases, would be irrelevant.

26.. *Section* 49.—An illustration would be useful to show exactly which is the sixtieth day from the day of sale, though it is of course open to any one to remark that no illustration has been found necessary during the many years this provision has been in force. A similar suggestion has been made in section 11. An illustration is not so much required in the case of section 49, where the method of reckoning has been mentioned, but it will conduce to clearness and therefore may be introduced.

27. *Section* 50.—Mr. Beames' full note on this section leaves little to be said. The main object of the changes proposed is to make the taking out of certificates of title after revenue sales as far as possible compulsory. This is in consonance with the orders of Government conveyed in your letter No. 4387—1497 L.R., dated 18th December 1889.

But this section has also come under consideration in another respect. It has been brought to the Board's notice that there is apparently a conflict between existing enactments which requires some remedy. By section XXVIII

of Act XI of 1859, section 50 of this Bill) the certificate of sale is declared to be in any Court of Justice sufficient evidence of the title of the purchaser, but as registration of such sale certificates is now compulsory under section 65 of Act VII of 1888 read with section 17 of Act III of 1877, it would appear that under section 49 of Act III of 1877 they cannot be accepted as evidence of sale until they are registered. Apparently section XXVIII of Act XI of 1859 should have been amended when Act VII of 1888 was passed. By Government order No. 2310—897L.R., dated 3rd July 1890, the Board were directed to deal with this matter on the present occasion. It should either be stated clearly, as an exception to the general law, that the certificate is admissible in evidence without being registered, or, as the Board would prefer, after the words "and the side certificate" should be inserted "when duly registered," or at greater length "after registration under Act III of 1877 or any other law in force for the time being for the registration of documents." The responsibility for getting the certificate registered must rest of course with the purchaser. If the suggestion made in paragraph 21 above with reference to section 44 is not accepted, it will be desirable to make the section 50 more complete, to add, after "Collector" in line 4, the words "and on payment of the stamp duty required by law"; they will serve at least to remind officers to take the stamp duty. The Legal Remembrancer sees no necessity for altering section 50 of the Bill, but his opinion is not in accordance with the Board's in this respect.

28. *Section* 51.—The following question has been considered in connection with this section. Suppose an estate has been sold in execution of a decree, unknown to the Collector, previous to the latest day of payment, what is he to do when the (late) proprietor defaults? Apparently the new proprietor, though he may not have been put in possession by the Collector, would be liable for the Government revenue, and, if so, that would suffice for the Collector. It is for the Civil Court to report the sale, and the Collector's register would be corrected by the insertion of the name of the purchaser, and the removal of that of the judgment-debtor. It would be for the Collector to proceed against the estate and the new purchaser, who might be left to his remedy in the Civil Court against his predecessor in title in the estate for any portion of the revenue he can legally claim from the latter. It will also be open to the new purchaser to register his name and address under section 14 of the Bill, or he may take action under section 17 or section 11. No legislation seems necessary, as it is incumbent on the purchaser of the estate to protect his interest by timely payment of the Government revenue. On the essential principle of the law that the estate rather than the person is liable for the revenue, the Legal Remembrancer sees no need for discussing the question raised in this paragraph. The Board concur in Mr. Beames' remarks about the delivery of possession and the assimilation of this section to the corresponding section of the Code of Civil Procedure.

29. *Section* 52.—The change which the alterations in this section are intended to introduce is perhaps the most important of the purposes of the Bill. The object is apparently to oust the Civil Court absolutely from all interference with revenue sales. If this is to be done without any regard for the possibility of injustice being inflicted, then the section may stand as amended: if not, then some such words as "except by decree of a competent Civil Court" should be inserted after "not" in line 17, and then section 76 of the Bill would apply. If neither of these courses is to be adopted, some middle course may be looked for. The Legal Remembrancer is of opinion that there should be an absolute ouster of the Civil Court, so far as to regularity or irregularity in service of notices, &c. The Board observe that, in paragraph 4 of the Government of Bengal's letter No. 3674—1230L.R., dated 28th September 1889, it was contemplated to make the sale certificate granted by the Collector conclusive evidence. The changes proposed by Mr Beames in sections 41 and 52 require the certificate and the attestation together to be treated as conclusive evidence. This attestation is the new feature of the Bill. In paragraph 18 above the Board have advanced reasons for not holding Collectors responsible for the correctness of all the facts of which the attestation is to be considered to be proof. It appears to the Board that, if it is meant that the attestation of the Collector

is not under any circumstances to be open to question on any of the grounds mentioned in the last few lines of this section, there may be risk of the work being carelessly or perfunctorily carried out. It is the fact that their work is liable to appeal or revision that keeps Collectors as well as other officials careful and accurate. It is to the nature of the attestation proposed that the Board have taken objection in paragraph 18 above. The Board quite agree in the desirability of ousting the jurisdiction of the Civil Courts, but they cannot help thinking that some provision should be made to meet the liability to error and the possibility of injustice which may occur under the system of attestation. The opinions of the officers consulted are divided on the question whether the Civil Courts should be altogether ousted under this section or some provision made for the interference of the Civil Court (in such a case as that of Lala Mobaruk Lal). The Commissioner of Orissa, for instance, writes as follows:—

"In view of the words '*in strict accordance* with all the provisions of this Act (section 46), it does seem a little strange that no procedure has been proposed under which appellants before the Commissioner or plaintiffs in the Civil Court will have some opportunity of proving alleged omissions to duly serve or post notifications and notices. This section stops the mouths of plaintiffs in the Civil Courts, and the Commissioner is not authorized by section 46 to take or cause evidence to be taken in appeal cases regarding the serving or posting of notifications and notices. The attestation made by the Collector under section 41 is quite sufficient when he speaks from personal knowledge, *e g*, with respect to the posting of a notification under section 9 in his own office and before his own eyes, and also when he acts on similar personal knowledge of the District Judge; but certificates of service made under section 8 by police officers and peons may not be worth the paper on which they are written. The question is a difficult one, for, on the one hand, it is not desirable that a Commissioner's time should be wasted in taking evidence on such matters, and on the other the work of recording depositions is not liekly to be done well if made over to an officer who is not reponsible for the final decision of the case. I do not see the necessity of making the certificate '*and* attestation' conclusive evidence of certain facts. The certificate alone should suffice."

Other officers write in the same strain that, where an attestation does not relate to facts within the actual knowledge of the person making it, and the proceeding held by the Collector is summary and largely *ex parte*, it is not safe to infer that his conclusion is indisputably right; he has to depend to a great extent on the returns of serving peons; and to make his decision resting on them unimpeachable would open the door to frauds of various kinds. On the other hand, it is represented that equity is sufficiently met by section 76 allowing a suit for damages. Reviewing all that has been said, the Board are inclined to agree with the Collector of the 24-Parganas, who thinks that as an appeal to the Commissioner is still to be allowed (sections 46) on the ground of irregularity, and suits in the Civil Court are still to be allowed (section 76) on the same ground, the attempt made in section 52 to give the purchaser an absolute title will prove futile. There is a conflict between the sections, and it is doubtful whether public opinion would sustain a provision barring all suits on such an enquiry as it would be possible for the Collector to make at the time of sale. The Board's conclusions are—(1) that the jurisdiction of the Civil Court should be absolutely ousted under this section with respect to the issue posting and serving of all notices, proclamations and notifications under this Act, by the introduction into this section in two places, *firstly*, after 'conclusive evidence, and *secondly*, after 'affected' of the words "in a Civil Court;" (2) that the nature of the attestation required should be approved, and its form prescribed as proposed in paragraph 18 above; (3) that provision should be made under sections 41 and 46, as suggested in paragraphs 18 and 23 above, for the Collector and Commissioner to take cognizance of and deal with cases of material irregularity in connection with the sale notices; (4) that section 76 be left as it is. While suggesting that the decision of the Commissioner in such cases should be final, the Board would have no objection to cases under this proposed provision being liable to be referred under section 47 to the Board and to Government.

30. *Section* 53.—The question of the duties and responsibilities of the Collector in dealing with the surplus proceeds of estates sold for arrears has been twice before the Board in recent years. They have decided on both occasions that his only course is to follow the plain directions of section XXXI of Act XI of 1859. The first time the Board agreed with the Legal Remembrancer that Government is in the position of a trustee for the late proprietor, and that the question of limitation

did not arise: they directed that the surplus should be paid over to the applicant (other than the late recorded proprietor or his heir or representative) on receipt of an order of the Civil Court directing the Collector to do so. On the second reference a decision of the Judge of Chittagong came before the Board, in which he had held that Article 62 of the second Schedule of the Indian Limitation Act, XV of 1877, and not section 10 of that Act or Article 60, 120, 133 or 145 of the second Schedule thereof, applied; he decided, in fact, that the Collector was neither the depository nor the trustee for the repayment of the surplus sale proceeds. On the latter point he referred to a decision of the Court of Chancery in the case of *Kincloch* v. *the Secretary of State for India*, L.R., 15, C.D. 1, that the Government of India is not capable of being a trustee. The Judge wrote: "James, L.J., said in that case:—' Nor is the Secretary of State for India in Council, the name by which the Government can be sued, a person capable of being a trustee.'" While the Judge held that judicial remedy was barred to the applicant, he gave his opinion that the right survived. The Board have been moved to make general rules regarding the amount of proof the Collector should require, and it has been proposed that it should be the same as that required by Government in the case of claims to an estate which has lapsed to the Crown. They have been unable to comply with this request while the law is under amendment. In their opinion it would be well to enact provisions to show that the Government is not in the position of a trustee or depository in the matter, and that the ordinary law of limitation Article 62) applies and should be acted upon. They are very averse to encouraging the recognition of stale claims which are barred by limitation. For the rest they consider the law may be left as it stands, and third parties required to establish their claims within three years in a Civil Court.

31. *Sections* 54-55.—Various objections have been offered to these sections, and several officers, including the Legal Remembrancer, are of opinion that they should be omitted. It is urged that Collectors should be responsible only for paying the residue of purchase-money to recorded proprietors, or for disposing of it according to the orders of a Civil Court, as they have quite enough work to do without trying claims to money, and the good effects of the Land Registration Act will be diminished if Collectors recognize on their own authority any claimants other than recorded proprietors. Again, is it intended that, if there are several applicants, some of whom may be recorded proprietors and others not, who make opposing claims, a Collector may adjudicate on their respective claims and direct the payment of the residue of the purchase-money accordingly? It is also contended that the law as it stands is clear, and does not inflict hardship on parties or expose Government to unnecessary danger of being sued, whereas the amendments proposed might give rise to difficulties and suits and throw work on the Collector which is at present better done by the Civil Court. Such applications, it is also pointed out, often involve very difficult questions of civil law, which revenue officers would frequently decide wrongly. If such applications are allowed at all, it is suggested that they should be charged with the court fee leviable on applications for letters of administration presented in Civil Courts, or should be accompanied by letters of administration.

It seems to the Board undesirable to throw on the Collectors the duty of deciding on such claims to surplus sale-proceeds. They should not be compelled to go beyond the entries in their own registers. If they become liable to civil suits, as Mr. Beames says in his notes, for refusing to pay any claimant, the better course would be, in the Board's opinion, to protect them by legislation from such civil suits. Or it might be enacted that, in the absence of an order from a competent Civil Court, the Collector shall pay the surplus sale-proceeds to the recorded proprietor on his application as soon as the sale is confirmed. The main principle should be that the Collector should be merely, as the Legal Remembrancer describes him, the stake-holder, not a depository in the legal sense of the term (Art. 145, second Schedule of Act XV of 1877), and that he should be prohibited and protected from taking any action in respect to the surplus sale-proceeds except under order of the Civil Court. The claimants should be left to fight out their battle among themselves. A limit of time within which a suit should be brought in the Civil Court by the claimants *inter se*, or an application made, might be laid down, as it is undesirable to have a number of such claims outstanding.

32. *Section* 56.—The word 'aforesaid' at the end of the section is not sufficiently clear. Some words should be substituted, such as "for default on which the said estate or shâre or independent tenure was sold," or "for the arrears for which the sale was held." Complications, it has also been said, may arise in cases of resale from two or more persons being successively declared the purchaser of the same estate, so that each of them would under this section be entitled to collect rents from the date of his purchase. To meet this it is proposed that the declaration under section 43 should be provisional, and that section 56 should provide that the purchaser under section 43 should be entitled to collect rents as soon as he shall have paid the full amount of the purchase-money and not before. The Board do not anticipate any real difficulty on this score, but the section might be recast as follows:—"The person who shall under section 43, or in the event of a resale under section 45, be declared the puerhaser of an estate, &c., &c." The words "all tenants and raiyats" in this section, and "his tenants or raiyats" in section 63 should, as proposed for section 10, be "all persons who have to pay rent to him."

33. *Section* 57.—A question has been raised, on the ground that districts are not permanently settled *as districts*, whether the words "the purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar, and Orissa" should not be changed to "the purchaser of an entire permanently-settled estate." No real necessity for changing the words has been shown. They were not new in Act XI of 1859. As they stand, they include temporarily-settled estates in permanently-settled districts. It has, for instance, been held* that the Sunderbuns in the 24-Parganas constitute part of a permanently-settled district. The Board would not recommend any change in the words mentioned, for fear of giving rise to unforeseen consequences.

* I. L. R., Calc. XIV, p. 441.

A suggestion has been made that "tenants" in sections 57 and 58 should be replaced by "tenure-holders." *Primâ facie* this appears to be a desirable change, as it is not understood that all the classes of "tenants," including occupancy raiyats, named in section 4 of the Tenancy Act, should be liable to ejection.

It is also objected that in line 8 and in the *third* exception "settlement" is vague, and that "permanent" should be prefixed. On the other hand, it has been pointed out that the word "permanent" in the *second* exception is an innovation of Mr. Beames' for which no explanation has been offered, and that it introduces a very great change in the law. In the district of Backergunge for instance, the *second* exception of section XXXVII of Act XI of 1859 protects tenures which were in existence at the time of settlement, whether such settlement was a permanent settlement or not, as *e.g.*, tenure recognized as existing in *dearah* lands at the time of a settlement. The Board are inclined to think that in all the places in this section where settlement is mentioned, it is the Permanent Settlement to which reference is intended to be made. In the exception, secondly, in section XXVI of Act I of 1845 the expression was "the Decennial Settlement;" so also in the corresponding section XXVII of Act XII of 1841. That section was again based on section XXX of Regulation XI of 1822, in which the Permanent Settlement was evidently indicated. Section XXXVI of the amended Bill, which accompained the report of the Select Commitee (on Act XI of 1859), dated the 16th April 1859, is the same as section XXXVII of Act XI of 1859. Read with section XXXVII of that amended Bill and the paragraph of that reportrs' which dealt with section XXXV of the original Bill, it shows that the distinction made at the time was between "ante-settlment" and "post-settlement,"—as if the great Permanent Settlement were the era to the date from —and not between "permanent" and temporary settlements. Apparently, when Act XI of 1859 was passed, "settlement" in the *second* and *third* exceptions in section XXXVII meant the Permanent Settlement. The Hon'ble Mr. J. P. Grant's speech in Council on the 22nd December 1855 seems to be consistent with this supposition. But the Board hesitate, in the absence of any necessity for such a course having been shown, to recommend that the word "permanent" be now inserted as suggested. It should, indeed, be removed from the *second* exception, without prejudice, as lawyers say, to the exact meaning of 'settlement' in that exception. If inserted in the second, there would be just as much reason for inserting it in the third exception, as in

the previous legislation no distinction is made between the meaning of "settlement" in those two exceptions.

34. *Sections* 64—75.—One officer has again proposed to revive what Mr. Beames in paragraph 48 of his notes has called the system of double sales, viz., that all estates should be in the first instance put up to sale subject to encumbrances; and, secondly, if the arrear of revenue has not been covered by such sale, to a sale free from encumbrances. The idea was put forward in the Board's letter No. 531A., dated 4th July 1885, and withdrawn in their No. 133A., dated 12th February 1889. No new argument has been advanced for its revival and it need not be reconsidered. Mr Beames has (with very small omissions) made apparently adequate proposals for the extension of the principle of registry to all tenures of every grade and kind. Nor would the Board support a suggestion which has been offered that the present opportunity might be taken to abolish special registry on the ground that an undue responsibility is imposed on Collectors and Commissioners by the law as it now stands, and carelessness or want of intelligence in making an enquiry under section 68 might at any time cause serious loss to Government. Another argument put forward is that the public revenue may be endangered, that raiyats in tenures have to pay higher rent than in estates, and that to further protect tenures to transfer a valuable right from the proprietor of the estate to the holder of the tenture, which should not be done without compensation. The Board support Mr. Beames' proposals.

35 *Section* 66.—It is suggested by a Collector that the name and tauzi number of the mahal in which the tenure is situated should also be stated in the application. This may be provided for without difficulty.

36. *Section* 67.—No allusion is made to the procedure by which it is to decided whether the deeds or proofs are genuine and sufficient or not. In the Legal Remembrancer's opinion the non-appearance of any one to dispute the claim is the main point. He thinks the proceedings must necessarily be *ex parte*, and should be summary. It would be undesirable, he observes that a judicial proceeding should be held by the Collector to be afterwards overridden perhaps by the Munsif. It should, the Board are disposed to think, be laid down whether the Collector's enquiry is to be altogether summary, or he is to take evidence and make it a judicial proceeding. It has been well observed that the provision for a reference to the Civil Court (or judicial enquiry) necessarily implies that the Collector's enquiry need only be summary. If this is the intention, it would be well to express it. Though enquiry would probably be *ex parte*, the Collector might be empowered to call for evidence should he consider it advisable.

37. *Section* 70.—There seems to be no good reason for the reproduction from the existing law of the words "*bonâ fide*" before the word "tenures." The only practical effect of these words (it has been remarked) is to suggest the idea that registration will protect fictitious tenures.

38. *Section* 75.—The question has been discussed whether *some* limitation will not be desirable to the registration of tenures which cannot be voided by sales for arrears of revenue. It is possible, it has been said, that the proprietor may, by creating encumbrances all over his estate for *salamis*, produce the result that, when the tenures are registered and the estate happens to be brought to sale for default, it will not fetch a high enough price to satisfy the Government revenue The Legal Remembrancer has specially called attention to the danger to which the Government revenue is thus exposed. He disapproves of admitting tenures of all kinds and degrees to registration, and would only give protection to tenures held direct from the zamindars. The Commissioner of Patna would not grant this form of protection to any tenures below those of the first degree: all tenure-holders of whatever degree may make a deposit under section 17, and the proposed change would, he thinks, greatly interfere with the existing rights of landlords, and confer upon subordinate tenure-holders rights which they have not bought or arranged to pay for. It might lead to subordinate tenure-holders withholding their rents, in order to ruin their landlord and get his estate sold up while their own tenures would be safe. He has based these observations upon Mr. T. M. Gibbon's remarks to the effect that tenures should only be exempt from sale if the rents due on them have been paid up to date. This is a matter for careful discussion by a Select

Committee. Another objection taken to this section is on another score—that of time. It is alleged that in its present shape it would be likely to promote the perpetration of forgeries and false personations before Registrars of deeds. It is said that "the existence of a document creating or purporting to create a tenure, which may be protected under this Bill, should be forced upon the alleged executant's notice within a reasonable time, if the tenure is to be protected at all, and should not be suffered to lie concealed and be sprung upon a proprietor at the will of its possessor and under conditions the most unfavourable to the former. It would be intolerable that a proprietor should be liable to be called upon, to the end of his life, to show cause under section 67 against the registry of a tenure alleged to have been created by any of his predecessors in interest, or by himself, or by others at some former period. The condition requiring the documents relating to such tenures to have been previously registered by a Registrar of deeds would afford little protection to the alleged executant or his representatives. Raiyats would be enabled to collude easily with one or more powerful co-sharers, and by waiting for favourable opportunities to get their holdings practically converted into tenures." The limit of time has been discussed by Mr. Beames in paragraph 51 of his notes. If the object is to render old tenures admissible to registration, it is difficult to suggest any limit of time which would be suitable. The objection raised above would be met by the Collector's enquiry into the genuineness or sufficiency of the deeds. The Board do not consider a limit of time requisite. On the main point discussed above, with reference to *salamis*, it is urged that the case supposed is an extreme one, and not likely to occur; that the proposed procedure would provide a sufficient check; that under the present law a proprietor can encumber his estate to any extent and get the encumbrances registered, but in practice this is not done; that any limitation is impracticable; that in such a case registration would be refused under section 68, as the revenue authorities would presumably be as careful in the future as in the past. On the whole the Board are inclined to think that there is not much probability of the danger occurring, to which their attention has been drawn. As a precaution, however, it might be enacted that all encumbrances should be voidable in the event of an estate passing into the hands of Government in consequence of its not fetching a price high enough to cover the Government revenue. The Commissioners of Dacca, Chittagong and Orissa are strongly in favour of abolishing special registration altogether. The Board do not consider that such a measure is likely to be entertained. Some minor suggestions have been made which should be considered. The preamble of Act XI of 1859 now expressly excludes from registration tenures resumable by the grantors or their representatives. It is presumed that it is not intended to admit them to registration. Again, comment has been made on the lowness of the fee (Rs. 2), which has been fixed irrespective of the rent paid for the tenure, and an opinion has been offered that the fee should have some reference to the value of the tenure safeguarded, and that the fee on special registry should be double that on common registry. These too are points which will be better dealt with in Select Committee. The amount of fee is hardly worth considering as a matter of revenue, and it is undesirable, while sanctioning the extension of the system of registration, to appear to surround it with petty restrictions.

39. *Section* 80.—It has been pointed out that, whereas section 68 provides for the reference of a question of special registry being made to the Civil Court, and the decision of the Court is binding on the Collector, yet by section 80 "no Civil Court shall be competent to order the Revenue Authorities to enter any tenure or farm in the special register." It is difficult to reconcile these sections. It will settle doubts if, in section 80, after "No Civil Court shall" the words "except under the circumstances stated in section 68" be inserted.

40. *Part VIII.—Miscellaneous Provisions.*—It will be necessary to introduce a section empowering the Board, with or without the previous sanction of Government, to make rules to carry out the provisions of the Act; such, for instance, as those referred to in Mr. Beames' paragraph 26 on section 41. It is also a matter for consideration whether there should not be a new section applying the provisions of the Code of Civil Procedure for enforcing the attendance of witnesses, &c., whenever required by the Commissioner and Collector.

41. *Section* 82.—Suggestions have been offered for the relief of Collectors from the mechanical labour of signing a number of notices, &c. It is proposed that stamping a name or signing initials should suffice. The word "sign" is not defined in the General Clauses Act. Without legislative provision it could hardly be held to include stamping with a name-stamp. So long as the act is performed by an authorized person, it is not really material whether a name is stamped, printed, or written by hand on notices, notifications, &c. In practice stamping is constantly, indeed, it is said, almost universally, resorted to, and its legality should not be left open to doubt. Other officers ask that after "Collector" in line 5 should be added "or by a gazetted officer authorized by him." The Board would be glad if some relief could be afforded to Collectors in such routine work.

42. *Section* 83.—It should be placed beyond doubt, as in section 44, whether the date on which the order was passed is to be excluded from, or included in, the 15, 30, 60 days, respectively. There is no "Extra Assistant Commissioner" in Bengal at present, and if there is no such officer in the part of Assam to which the Bill may be intended to apply, the words might be omitted from this section.

43. *Section* 84.—The Commissioner of Dacca thinks that, if special registration is retained, the term allowed for revision ought to be extended to at least three years. The point may be considered in Select Committees by comparison with the limitations against Government in other matters.

44. *Sections* 85—87.—It has been observed that these sections would come more conveniently and appropriately under Part IV, which deals with "Sales."

45. *Section* 87.—A question has been recently raised by a Collector whether a defaulting proprietor should be held liable for the existing and subsequent arrears of revenue, when his estate has been put up to auction and no bid has been obtained, and it has not been bought on behalf of Government under section LVIII of the existing Act, and whether such arrears should be realized from him under the certificate procedure, in spite of the issue of notices under section VII of the Sale Law forbidding his tenants to pay rents to him. The Collector reported that such was the practice in his district, but he considered that, owing to the effect of the notice under section VII, the defaulting proprietor is only liable for the revenue due up to the date on which the estate defaulted, and for which it was brought to sale. The Board have informed the Collector that the defaulting proprietor should not be held liable for arrears accruing after the date of the notice to the raiyats (under section VII of Act XI of 1859) and before the sale.

It has been necessary in this case to consider the point whether a zamindar is entitled to have his estate sold for arrears of revenue. The Board have heitherto ruled that "a proprietor has no *right* to have his estate sold, but the right to sell is the right of Government alone, the object being the recovery of the Government revenue." The view of the Board, as then constituted, will be found stated in paragraph 10 of their letter No. 531A., dated 4th July 1885, to Government. This view was accepted by Sir Rivers Thompson. But the Legal Remembrancer, who was consulted in the recent case has held this *dictum* to be incorrect. In his opinion—

"The only liability which a zamindar is under for revenue, is the liability arising from his engagement to Government *in respect of the estate he holds*. When the Sale Law was introduced it provided practically for his escape from this liability by the cession of his estate.

"It would be against this principle to insist that, however valueless the estate may have become, the zamindar should yet for all time be compelled to pay the original revenue as long as his other sources of wealth enabled the Collector to extort it from him. Diminution of arrear is recognized by Act IX of 1847, section V, as a ground for reduction of revenue, which a zamindar can insist on. There was never an intention to keep him and his desendants in eternal bondage to Government for revenue, which he himself had no means of realizing from the land. To put it shortly, the moment a Sale Law was introduced *ipso facto*, the land became responsible for the revenue, not the man."

Under these circumstances it seems to the Board necessary to provide, in section 87, that if there be no bid for an estate, the Collector shall be obliged to purchase the estate on account of Government for a sum not exceeding one rupee. It is possible, however, that defaulting proprietors may have recourse to such a provision of the law, with a view not only to get rid of their estates, and possibly to annoy other share-holders, but also to escape from the payment of arrears of revenue. It should, therefore, the Board think, be made clear

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that when a Collector thus compulsorily buys for a sum not exceeding one rupee an estate which has fallen into arrears, he is still to be entitled to proceed to realize under the Public Demands Recovery Act any arrears in connection with the estate still due from the defaulting proprietor, and not covered by the sum, a rupee or less, paid for the estate. The practice now is in many districts for the Collector invariably to buy for one rupee the estates for which there is no bid at auction-sales for arrears of land revenue, and the Board are not aware that any harm has been done by the practice. They have advisedly suggested that the price to be paid need not always be a rupee, though it should not exceed that amount, as in Chittagong the Collector has habitually to violate the existing law, and from another quarter it has been reported that in many cases one anna would buy an estate.

The Commissioner of Dacca has also thrown out a suggestion that in order to prevent combinations between bidders, experienced Collectors should be allowed to bid for Government at land revenue sales. This would be unacceptable to land speculators, but would probably be welcomed by landowners compelled by embarrassment to part with their estates, as the effect would be to raise the prices obtained. It does not seem necessary, however, to provide for this by law, and it may be tried by executive order at any time with the approval of Government.

46. *Section* 90.—Other officers who have alluded to this section concur with Mr. Beames' view that it may now be safely excluded as being obsolete and therefore superfluous. The Board have no special experience on the point.

MINOR MATTERS.

47. *Section* 3.—"Estate." The word "Bengal" should be inserted before "Land Registration Act, 1876," and after "section 22" should be added the words "of this Act." In the definition of "Recorded Proprietor" the word "Bengal" should be similarly introduced.

"Official year." The words "of each year" should be added after the words "first day of April."

Section 6.—"Give notice." } The question has been raised whether in each
Section 9.—"Published." } case the number of times should be fixed by law. The Board consider that nothing is to be gained by such a course, as it would only give grounds for technical objections. So long as the law is worded as it is, there is nothing to prevent the number of times being settled and altered by executive order as may be found to be convenient.

Section 9, *line* 8.—"and" should be "or."

Section 10, *line* 13.—After "estate" the words "or independent tenure" should be inserted. A similiar addition is required in other sections, viz., in section 19, line 2 and line 8, after the word "estate;" in section 20, line 2 and line 4, after the word "estate;" in section 43, line 3; in section 44, line 5 and line 14; in section 45, lines 10 and 13; in section 47, last line but one; in section 53, line 8.

Section 11, *line* 7.—After "estate" the words "share of an estate" should be inserted.

Section 12.—In two places the words "estate or tenure" should be changed to "estate, share of an estate, or indepenent tenure."

Section 16, *line* 5.—The words should be "to his own recorded interest." *Line* 13.—After "estate" should be added "or independent tenure."

Section 17, *line* 15, and penultimate line. "Independent" should be inserted before "tenure." *Lines* 29-39.—"Entitled to recover." The words "by civil suit" should be added. *Line* 36.—Line should be "lien."

Section 36, *line* 12.—"State" should be "stated."

Sections 37 *and* 38.—In four places in these two sections after the word "estate" the words "or share or part of an estate" should be added.

Section 42.—"Rent-roll" should be "revenue-roll" and "tauzi" in the second Schedule of the Bill should also be "revenue-roll."

Section 68.—After "probable ground of objection" the words "or if the deeds.....genuine and sufficient" from section 67 should be repeated.

Section 71.—"VII" should be "VIII."

Section 72, *line* 7.—"Shall" should be "may," to admit of the amount being realized amicably and not compulsorily under the Act mentioned.

Section 78.—"Court of Justice" should be "Civil Court."

Section 84.—"Of Revenue" should be omitted, as "Board" is defined in section 3.

The Bill to amend the Public Demands Recovery Act, 1880.

48. *General.*—Some useful suggestions of a general character have been made which will require further consideration. The Commissioner of Orissa proposes that one of the improvements which have been with the sanction of Government adopted as a rule of practice and subsequently embodied in section 47 of the Revenue Sale Law Amendment Bill, should be extended in substance to certificate cases in which Government itself is the claimant under a written agreement; that is, that a judgment-debtor in any such case, against whom a certificate has been made, should not be allowed to contest its correctness, unless and until he has deposited in the Revenue Court the full amount of the sum entered in the certificate. The effect of this would doubtless be to prevent dilatory and untenable defences.

Another proposal in the direction of obviating difficulties and delays in the realization of certain demands is that the Certificate Officer should be empowered to attach and sell the moveable property of the judgment-debtor in execution of the certificate within one week of the date on which notice of the certificate may have been served. The Board apprehend that this will be regarded as too rapid a course of action to be ordinarily admissible.

The most important amendment has been proposed by the Collector of Backergunge, with regard to the effect of sales of immoveable property under the Act. He says:—

"A certificate can only be executed as a money decree, and in a sale under the certificate only the right, title and interest of the judgment-debtor is transferred, or, in other words, any immoveable property sold under a certificate is sold subject to all encumbrances, and experience shows that this means "no bid" in a very large number of instances. It is particularly in the case of certificates for cess and for rent of holdings in khas mahals that this occurs, and the reason is that arrears, as a rule, only accrue for cess and rent where the property is heavily mortgaged, and the proprietors are involved in monetary difficulties, arising in this district at least from pure improvidence. The mortgagees are mostly money-lenders, and the only effect of retaining the law as it now stands, is to protect the interest of this class of the public at the cost of Government ..... At present Government has placed itself in a worse position with regard to the realization of rents from its tenants than that occupied by ordinary landlords. Under the provisions of section 159 to 166 of the Tenancy Act, an ordinary landlord has a guarantee for his rent by the power to sell defaulting holdings free from all encumbrances, and there seems to be no reason why Government should not reserve to itself the same right. I, of course, am aware that Government has, strictly speaking, the same right, if it chooses to sue regularly in a Civil Court, but practically it does not exercise that right, and, except in certain extreme cases, cannot do so without incurring a large amount of useless expenditure. In each case recourse is at first had to the certificate procedure, and it is seldom that after the proceedings under the certificate have been gone through, it is deemed desirable to refuse a low bid for encumbered property and incur all the expense and trouble of a civil suit for the sake of a few rupees, and the result is either that the holding passes into the hands of the money-lender, or the new purchaser gets a heavily-encumbered holding, and is himself before long involved in difficulties. All this would be prevented by provisions similar to those in the Tenancy Act being inserted in this Act, and to this there could be no possible objection. I would, however, suggest that, equitably, the provisions might be extended still further and made to apply not merely to holdings of which the rent is in arrear, but to all estates, tenures and holdings of which road cess and public works cess and zamindari dák cess is due. If the provision were so extended, and it were made possible to put up to sale such estates, &c., free from encumbrances for such arrears, there would, without resort to actual sale, be an immense improvement in the realization of these demands. Indeed, it will scarcely be rash to prophecy that

sales of immoveable property for such arrears would cease, and the cesses would be paid up promptly.

"I have given a considerable amount of attention to the subject, and, as far as I have seen, it is very rarely indeed that those cesses are allowed to fall into arrears because there are not funds available for payment of them. The comparative rarity of defaults on account of revenue is a clear proof of this, and if the estates were liable to be sold free of encumbrances for the cesses in the same manner as they are liable to be sold for revenue, default on account of cesses would be reduced to a minimum."

The Board are at present aware of no objection to the adoption of this amendment which, so far as they can see, would be a distinct improvement in the law.

Another officer has suggested the addition of a clause regarding the striking off of certificates and the effect of such striking off, with the view to the introduction of a legal limit if no steps are taken. Managers of Wards' estates have a habit of taking out certificates, and then waiting to see whether the raiyats will pay amicably. Some legal stimulus to the speedy disposal of certificates would be acceptable.

49. *Section* 3.—The Collector of the 24-Parganas proposes to add to this section the words, "and where, if any Act, or Notification passed or issued prior to the passing of this Act, reference is made to Act VII (B C.) of 1868 or Act VII (B.C.) of 1880, such reference shall, so far as it may be necessary, be read as applying to this Act or the corresponding provisions thereof." The Board support this proposal.

50. *Section* 4.—"Collector." Mr. Beames, in paragraphs 4 to 7 of his notes has explained the difficulties which have arisen from the vagueness of the definition of the term "Collector," and from the want of a definition of "Collector of the district." This matter has also formed the subject of the recent representation noted in the margin, submitted to Government with a view to immediate legislation to meet the difficulties indicated. The remedy proposed by Mr. Beames is to have separate definitions for "Collector of the district" and "Collector." The Board have had it under consideration whether much confusion of language might not be avoided by substituting in the Act the words "Certificate Officer" wherever the Collector-empowered-under-the-Act (*i.e.*, *not* the Collector of the district) is meant. The *raison d'être* of the Collector (so empowered) is to be the Certificate Officer, and make the certificates under section 7, last paragraph (of the Bill), and section 9(*c*). By the Board's rules under the Public Demands Recovery Act, the Board at once proceed in practice to call this officer "the Certificate Officer" (see Section II, Rule I), and they think that it would be better to give him this designation in revising the Act. Then "Collector" might be defined to mean the "Collector of the district" and him only; and (in the definitions) "Collector" might be changed to "Certificate Officer," and defined to mean as at present. If this view is accepted, then the words "to perform the functions of a Certificate Officer under this Act" should be substituted for "to perform the functions of a Collector under this Act" in section 4 (*b*), and these functions would appear when, throughout the Act, "Certificate Officer" is substituted for the single word "Collector" (*not* Collector of the district). The Legal Remembrancer sees no objection to the change of name as proposed. There is a general consensus of opinion that a distinction should be made in the Bill between the "Collector of the district" and the officer empowered, for certain purposes, to perform the functions of the Collector of the district. In the Board's opinion it does not much signify whether the two officers are called—(A). (1) Collector of the district and (2) Collector, or (B). (1) Collector and (2) Certificate Officer, or (C) (1) Collector and (2) Certificate Deputy Collector. They are inclined to recommend (B), as representing the actual facts, and because Subdivisional Officers, who are Certificate Officers, are often not of the class of officers usually designated as Deputy Collectors. It seems to the Board that the main points to provide for are that (1) the Collector of the district is in certain matters to have controlling and delegating powers, including the power now practically exercised of referring objections to the 'requiring officers' for report; (2) the Collector of the district and the Certificate Officer are in certain matters to have concurrent powers, which the Collector may reserve to himself if necessary.

No. 66A., dated 28th January 1891.

If these principles are accepted, there ought to be no difficulty about the drafting of the Act. Until they are accepted, nothing would be gained by the Board endeavouring to emendate the Bill in detail. The object should be to save the Collector from the ordidary routine work of making and signing certificates, and at the same time to retain in his hands the power of supervision and effective control commensurate with his responsibility. The Board think therefore that the existing Act should be thus revised; where the word ' Collector" in the Act is intended in practice to mean, or to include only the "Collector of the district," the distinction should be drawn in the Bill. Thus there would probably be two expressions to be used in the Bill—(1) Collector (where the District Collector's controlling and delegating powers are meant); (2) Collector or Certificate Officer (where their powers are meant to be concurrent). Instead of repeating the alternative expression (2) "Collector or Certificate Officer" in a number of sections, it might be arranged to use the descriptive name "Certificate Officer" only, and to provide that wherever it occurs it is open to the Collector (*i.e.*, Collector of the district) himself to assume the functions of the Certificate Officer in any case or class of cases by special or general notice posted in his own office. It is understood that Mr. Beames decided against using the expression "Certificate Officer" on the ground that by the use of this term, the Collector of the district would be precluded from issuing and dealing with Certificates himself, which he might sometimes find it necessary to do. By the arrangement just proposed, this objection can easily be met. It would be necessary to provide that a "Certificate Officer" (ordinarily an experienced Deputy Collector) at head-quarters may be vested with the appellate powers of the "Collector of the district" under section 18, subject always to the control and revisionary powers of the latter. Such a certificate officer should not be authorized (except perhaps during the absence of the Collector on tour) to make over objection cases to the other Deputy Collectors for trial or disposal.

In Calcutta it must be remembered that the Collector of the 24-Parganas is the Collector of Calcutta. To the definition of "Collector of the district," a clause should be added thus—"and within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta," and in the (proposed) defination of "Certificate Officer" for the words "Collector of Calcutta" should be substituted "Deputy Collector of Land Revenue of Calcutta." The Board's meaning is that appeals should be from this officer to the Commissioner of the Division, subject to the new proviso to section 18 of the Bill and to section 30 thereof.

Again, to save correspondence which is really of a routine character, the definition of a Certificate Officer should include (*a*) every officer in charge of a subdivision, and (*b*) any officer at the sadar station specially appointed (not by the Lieutenant-Governor but) by the Collector of the district (with the sanction of the Commissioner, if this is thought necessary) to perform the functions of a Certificate Officer under this Act.

It has also been suggested that there should be some more definitions in this Bill, and that they might be the same as in the Revenue Sale Law. For instance, "the Board" should be defined, and the expression "Board of Revenue" abbreviated in sections 22(*b*), 24 and 30.

"Commissioner" also should be defined, and the other definitions in the Revenue Sale Law Amendment Bill considered for incorporation in this Bill also.

There is at present no Extra Assistant Commissioner in Bengal.

51. *Sections 5 and 6.*—The Commissioner of the Presidency Division proposes to simplify the Act by abolishing these sections, and including the subject-matter in the present section 7. If this is agreed to, he would alter clause (*a*) of section 8, so that it may do the duty now imposed upon clause (*a*) of section 6, and make section 15 include the present clauses (*b*) and (*c*) of section 6.

The Board see no real objection to this proposal. But it must be borne in mind that in the Schedule of the Bill, the Form No. 1 of Certificate of Arrears of Revenue, attached to section 5, is not the same as the Form No. 2 of Certificate of Arrears of Public Demands, attached to sections 7 and 9. It seems hardly possible to dispense with these separate forms.

52. *Section 7.*—It is observed that the Legal Remembrancer would prefer a section using general words which should include not merely these but all similar debts to Government under future Acts as well. The Board think that the plan of enumerating all the demands should be adhered to; it was the principle deliberately adopted in framing the Act, as shown by the Hon'ble Mr. C. D. Field's speech in the Bengal Legislative Council on the 13th March 1880, and is clearer for reference. The Board are not concerned with the further question whether municipalities, District Boards, &c., should be entitled to have the Act applied for recovery of their debts, except to remark that such an extension would be an entire change of the principle of the Act, which is for the recovery of the dues of Government or of the Wards' and other estates in charge of Government officers. They do not recommend the change proposed.

Section 7 (3).—The words 'or in the following sections and portions of the following Acts passed by the Governor-General in Council, that is to say, in Act VII of 1870, 'The Court fees' Act,' sections 19G, 19H" have been repealed by section 21 of Act VI of 1889. And the words "and the note to paragraph 12 of Schedule I" have been repealed by the first Schedule of Act VII of 1889. Mr. Beames has replaced them all into the Bill, but has not explained why he has done so. The Board do not see how this can be done after the Acts mentioned which were passed by the Supreme Council so lately as in 1888 and 1889. Also section 19H of Act VII of 1870, the Court fees' Act, has been repealed by the Schedule of Act VIII of 1890. The words "or in the following sections and portions of the following Acts passed by the Governor-General in Council, that is say," should, however, be restored, as three Acts of the Governor-General in Council are subsequently mentioned.

It has also been recommended that fees due from farmers of pounds or their sureties under Act I of 1871, should be made recoverable by the certificate procedure.

Mr. Dutt as Collector of Burdwan, proposed the omission of clauses (4), (5), and (6) of this section. From the list of public demands recoverable by the certificate procedure, high judicial authorities have, he says, held with the Director of Land Records and Agriculture that Government in its position of landlord should not assume the powers and functions of a Civil Court in respect of rents due to itself. His own experience is that in no department is the certificate procedure so frequently abused as in the Wards' and Khas Mahal Departments. Hundreds of certificates are, he says, annually filed on the requisition of managers, based on the reports of low-paid khas mahal tahsildars. It would make them both much more careful and conscientious in keeping their accounts if they had to sue for their rents in the Civil Court like other zamindars. Good administration, justice, and the interests of the cultivators demand, he says, that Government should not as landlord assume judicial powers which are denied to other landlords. The Board have read with some surprise these remarks coming from a revenue officer of standing and experience. He would appear to have overlooked or failed to carry out the orders of Government and the Board, which are embodied in Rules 21, 22 and 23 of section III, page 21 of the Certificate Procedure Manual, 1888, quoted in the margin for facility of reference. The Commissioner of Burdwan comments on Mr. Dutt's views as follows:—"I cannot agree with Mr. Dutt. Good administration and effective supervision on the part of a Collector can reduce the evils he complains of to a minimum. The

21. To obviate hardship, District Officers are directed to notify the existence of arrears before certificates are issued—(*a*) by putting up a list of defaulters in their offices, and (*b*) by sending warnings to defaulters by printed post-cards, in all cases in which there is no reason to believe that the debtor has had intimation of his liability. In the cases of road-cess and zamindari dak-cess collections, this procedure will probably be unnecessary, except in the rare instances in which the amount of the demand has recently been changed.

22. At the same time it must never be forgotten that the certificate procedure is not to be looked upon as the normal method of collecting the dues of Government. The officer responsible for the collections will in all cases be expected to show to the satisfaction of the Collector that he has done his best to realize the amount by ordinary means, and that defaulters have been duly warned before the report of their names to the Collector.

It has been brought to the notice of Government that certificates are in some districts filed in excessive numbers, and for demands which would probably have been amicably realized had the claim been brought to the notice of the defaulter. Great caution should be used in the issue of certificates, which are a suitable method for the recovery only of demands of which the debtor was previously cognizant, and which he has neglected to pay in due course.

23. The object of the extension of the certificate procedure to Wards' estates is to facilitate collections, and to do this by dis-

in practice women are not arrested under decrees, but I am opposed to giving any additional facilities to the male debtors of Government to evade payment, and think that, as section 245B has been deliberately excluded, section 337A should likewise be omitted. Sections 235 and 294, Civil Procedure Code, might be made applicable in the case of Court of Wards cases. Section 272, Code of Civil Procedure, should be included as at present. Money in deposit cannot be attached under a certificate. Section 296, Code of Civil Procedure, as to the sale of negotiable instruments and shares through a broker, should also be added to the sections enumerated under section 21 of the Bill." These remarks should be scrutinized by legal experts. The Board are disposed to think that, as section 337A has been introduced into this section, sections 245A and 245B should be inserted also.

With regard to clause (12) of section 21, a question was mooted to the Board,—who should hear appeals after sales? Section 589, Code of Civil Procedure, provides for approvals to the High Court from any order in section 588, clauses (16) and (17) *i.e.*, for appeals in cases of sales and insolvency-matters. This Bill should (it is observed) mention the tribunal by which these appeals are to be heard under it. They will not fall under section 18, which is evidently intended to apply to petitions of objection only. The Commissioner of the Presidency Division thinks these appeals may be heard by District Officers, and that section 18 of the Act may be altered so as to include them. The Board are inclined to concur in providing for these appeals in section 18, though they would prefer that the Commissioners should hear them.

60. *Section* 23.—In line 9 it is provided that the competent Civil Court 'shall direct,' the refund of the purchase-money to the purchaser. The question has been considered whether any penalty or remedy would be necessary to meet the case of such an order not being carried out. If this order of the Court has not the force of a decree, it might be provided that it should have it. Then ordinarily it would be for the purchases to take out execurion against the judgment-debtor for refund of the purchase-money. The purchase-money would be lodged in the Collectorate, and, so far as the order emanating from the Civil Court is directed to the Revenue authorities, no question of its being disregarded would arise. But there might be great delay on the part of the purchaser in applying for execution of the Court's order. It is undesirable that there should be such delays. It has therefore been appropriately suggested that the principle of section XXXIV of Act XI of 1859 should be made applicable to the case; so that if the party in whose favour the Court's order operates does not take advantage of it within six months, he should lose all benefit therefrom.

61. In paragraph 24 of Mr. Beames' notes it is shown that the certificate of title in the form prescribed by section XXVIII of Act XI of 1859 given to a purchaser at a sale under Act VII (B. C.) of 1880, is inappropriate as the property sold is often not a mahal standing in the Collectors tauzi; it is also often sold for demands other than its arrears and the date from which the sale should have effect cannot be that following the latest day fixed for payment. The result is that the certificate may be issued (in that form) for something, *i.e.* and estate or a share which has not been sold, wheras nothing passess but the right, title and interest of the judgment-debtor. In practice a modified form of certificate has been used in some district which is illegal. The Legal Remembrancer has given similar advice, and pronounced the form of the certificate given under the Civil Procedure Code to be suitable. The matter was laid before Government with the Board's letters No. 737 A., dated 10th September 1889. It would seem that this Bill (one object of which is to separate the certificate procedure from that for revenue sales) now makes the necessary legal provision for the use of Form No. 150 in the fourth Schedule of the Code of Civil Procedure, as that is the form provided under section 316 of that Code, and section 316 is incorporated in section 21(6) of the Bill. As much constant reference is required by the Bill to the Code of Civil Procedure, it is hardly neccessary to incorporate this particular form in the Bill any more than any of the numerous sections of the Code to which reference is made.

MINOR MATTERS.

62. *Section* 5 (2), *line* 7.—"1890" cannot now be correct.
Section 9 (*b*).—The last words "notice" should be "requisition."

Section 9 (*c*).—"Any requisition" should be "such requisition."
Section 18.—"Provide" should be "provided."
Section 23.—In *line* 4 "18" should be "20."
Section 27, *line* 6.—"Notice" should be "requisition."

60. Having concluded their comments on Mr. Beames' Bills, the Board would have been glad to terminate their report at this point, but since those Bills were forwarded to them for consideration, they have been desired in your letter noted in the margin to report on a suggestion of the Government of India contained in the Hon'ble Mr. Benett's letter of the 9th June 1890 (in which the Land Revenue Administration of the Lower Provinces for the year 1888-89 was reviewed) as follows:—

No. 2518—972L.R., dated 18th July 1890.

"The Governor-General in Council has had occasion to notice the absence from the sale and Public Demands Recovery Laws, now under amendment, of provisions for the arrest of the defaulter and distraint of his moveable property, such as exist in other provinces. It seems worthy of the Lieutenant-Governor's consideration whether the addition of some such provisions would not facilitate collections, and at the same time obviate the necessity of sales of immoveable property except as a last resort."

64. The Commissioners and District Officers have been consulted on this suggestion, and have dealt with it in their reports on Mr. Beames's Bills. But it has seemed to the Board that this is a question which, while due weight is attached to the opinions of the officers at present concerned with the revenue administration of Lower Bengal, requires also to be examined in its historical aspect. They have therefore carefully studied the nature of the means which have been adopted from time to time to realize arrears of land revenue, and the following paragraphs will show how it has come to pass that after several changes and reversions in principle and many alterations and improvements in details, the sale procedure, commonly known as the Sunset Law, has long been established as the best method of enforcing the land revenue demand in the Lower Provinces. This was the view taken by the Hon'ble Mr. J. P. Grant, moving in the Legislative Council on the 22nd December 1855, the first reading of the Bill which became Act XI of 1859.

65. The East India Company, as is well known, acquired in perpetuity the Dewanny authority over the provinces of Bengal, Bihar and Orrissa in August 1765. But the administration of the revenues was conducted for the most part through native agency till the year 1772. In that year the Court of Directors resolved "to stand forth as Dewan, and by the agency of the Company's servants to take upon themselves the entire care and management of the revenue." It is hardly necessary to recapitulate all the steps which led up to the Permanent Settlement of the land revenue in 1793. They have been summarized for all time in the Fifth Report from the Select Committee of the House of Commons in 1812, to which reference has already been made. It is sufficient to mention some of the points which bear on the subject under disscussion. In 1714 the affairs of the East India Company came before Parliament, and the Company were commanded to institute an inquiry into the complaints which had prevailed "that divers rajas, zemindars and other landholders within the British territories in India had been unjustly deprived of, or compelled to relinquish or abandon their respective land, or that the rents, tributes or services required of them had become oppressive. These grievances, if founded on truth, were to be effectually redressed, and permanent rules established on principle of moderation and justice, by which their rents and tributes should be demanded and collected in future.

Harrington's Analysis, edition 1814-15, volume II, pages 2-3.

Fifth Report from the Select Committee of the House of Commons, dated 28th July 1812, Madras edition 1883, page 4.

66. The Marquis Cornwallis was sent out to India to carry out such reforms as might be necessary. The following reference to the letter of instructions dated the 12th April 1786, addressed to him by the Court of Directors, shows how the hereditary tenure of the zamindars from the first regarded as the proper security for the payment of the revenue.

Page 14.

* * "The disapprobation of the Court had been excited by the frequent changes which had marked the financial system of their government of Bengal, and they expressed their preference of a steady adherence to almost any one system attended with watchful superintendence. They censured the ineffectual

attempts that had been made to increase the assessment of revenue whereby the zamindars (or hereditary superintendents of the land) had been taxed to make room for the introduction of farmers, sezawals and amins, who having no permanent interest in the land, had drained the country of its resources. They disapproved the rule recently established, which prohibited the Collector from having any concern in the formation of the settlement of his district; and noticed the heavy arrears outstanding on the settlement of the last four years, which had been formed under the immediate direction of the Committee of Revenue, and expressed their opinion that the most likely means of avoiding such defalcations in future would be by introducing a permanent settlement of a revenue estimated in its amount on reasonable principles, for the due payment of which the hereditary tenure of the possessor would be the best, and in general, the only necessary, security. They therefore directed that the settlement should be made in all practicable instances with the zamindars, and that in case of his established incapacity for the trust, a preference should be given to a relation or agent, over a farmer. They apprehended the design of the Legislature was to declare general principles of conduct, and not to introduce any novel system, or to destroy those rules and maxims of policy which prevailed in well-regulated periods of the native Government. With respect to the amount of the assessment, the Directors were of opinion that the information already obtained might be sufficient to enable their Government in Bengal to fix it, without having recourse to minute local scrutinies; and they suggested the average of formers years' collection to be the guide on the present occasion; and on this point concluded their instructions with remarking that "a moderate jama or assessment, regularly and punctually collected, unites the consideration of our interest with the happiness of the natives and security of the landholders more rationally than any imperfect collection of an exaggerated jama, to be enforced with severity and vexation."

Page 15.

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Page 25.

67. Lord Cornwallis on his arrival found that the Government did not possess sufficient information, and determined to continue for a time the practice of annual settlements. After full enquiry the decennial settlement was concluded in 1793 for all districts, and in that year, after a previous reference to the Court of Directors, the permanency of the settlements which had been formed, as well as of those which were yet in progress, whenever they should be completed, was notified to the landholders by a proclamation dated the 22nd March. By Article VI thereof it was laid down as follows:—

"In the event of any zamindar, independent talukdar, or other actual proprietor of land, with or on behalf of whom a settlement has been or may be concluded, or his or her heirs or successors, failing in the punctual discharge of the public revenue which has been or may be assessed upon their lands under the abovementioned regulations, a sale of the whole of the lands of the defaulter or such portion of them as may be sufficient to make good the arrear will positively and invariably take place."

68. This was one of the main principles of the Permanent Settlement. A retrospective glance may now be taken at the systems which had obtained (i) under native rule, and (ii) just previous to the Permanent Settlement.

Fifth Report, page 60

"The sale of land by auction, or in any other way, for realizing arrears of land revenue appears to have been unusual, if not unkown in all parts of India, before its introduction by the British Government into the Company's dominions."

Page 74.

(I) "Under the native Governments, the recovery of arrears from defaulters was sometimes attempted by seizure and confiscation of personal property, or by personal coercion. The zamindar might experience the mortification of having the administration of the zamindari taken out of his hands and entrusted to a sezawal. He might be imprisoned, chastised with stripes and made to suffer torture, with the view of forcing from him the discovery of concealed property. He was liable to expulsion from the zamindari. He might be compelled to choose either to become Musulman, or to suffer death. But under whatever degree of adversity the zamindars might fall, or whatever might be the extremity, or injustice or cruelty practised on them, they had still the consolation of preserving their rank, and of being considered as zamindars. They themselves might come under the displeasure of the Government and experience its severities; but their families would still

Some idea of the cruelties to which those who failed to pay land revenue were subjected under Muhammadan rule, may be gathered from pages 352 to 354 of Harington's Analysis, volume II

maintain the consideration due to their station in society with the chance of recovering in more favourable times possession of their zamindaries. The policy of those Government was adverse to the dispossession of a zamindar, who, by means of his family connexions and caste, might return and disturb the possession of his success. Hence it appears that even in cases where the zamindar from rebellion or other misconduct was deemed deserving of death, the succession of a near relation or of an infant son, or of a widow placed under tutelage, was generally deemed preferable to the introduction of a stranger to the possession of the zamindari."

Fifth Report, page 74.

(II) "Under the British administration, down to the period of the introduction of the permanent settlement, and the new code of regulations, it had not been usual to resort to the sale of land for the recovery of the arrears of revenue, and in a minute recorded on the proceedings of the Board of Revenue in July 1799, it is asserted "that from the Company's acquisition of the ceded lands (consisting of the 24-Parganas, the districts of Burdwan, Midnapore and Chittagong) comprehending, until the formation of the permanent settlement, a period of 30 years; and from the accession to the Dewanny until the abovementioned time, there had hardly an instance been found of the property in landed estates having changed hands, by cause of debts, either public or private, certainly of the large ones none." Although the engagements entered into for the five years' settlement contained a clause subjecting the land to sale for the recovery of arrears, it does not appear that the measure was anywhere resorted to for that purpose, although heavy balances occurred which, to a considerable extent, proved irrecoverable. The landholders were therefore unprepared by any experience they could have had under the former Governments, whether native or British, for the rules which were, by the terms of the permanent settlement, introduced for the recovery of arrears of revenue from defaulters, and were perhaps not aware of the necessity which the nature of the settlement imposed for a rigid enforcement of them."

Harington's Analysis, vol. II, page 336.

"The only modes of coercion for the recovery of arrears of revenue which could be consistently sanctioned by a British authority (besides the exaction of interest or a penalty on the amount due) were imprisonment of the defaulter's person and the attachment and sale of his property."

These methods were authorized by Regulation XIV of 1793, and subsequently disallowed.

Fifth Report, page 71.

69. After the Permanent Settlement the revenue was not realized with punctuality, and lands to a considerable extent were periodically exposed to sale by auction for the recovery of outstanding balances. In the native year 1203, corresponding with 1796-97, the land advertised for sale comprehended a jama or assessment of sicca Rs. 28,70,061,* the extent of land actually sold bore a jama or assessment of sicca Rs. 14,18,756,† and the amount of purchase-money sicca Rs. 17,90,416.‡ In 1204, corresponding with 1797-98, the land advertised was for sicca Rs. 26,66,191, the quantity sold was for sicca Rs. 22,74,076, and the purchase-money sicca Rs. 21, 47,580. Among the defaulters were some of the oldest and most respectable families in the country. Such were the Rajas of Nadi, Rajshahi, Bishenpur, Cossijurah and others. Nevertheless, though the revenue was not realized with the punctuality which might have been expected, the assets and amount realized exceeded those of former periods, and this was effected, though the personal coercion formerly practised had been abandoned and the most scrupulous punctuality was observed in maintaining inviolable the public engagements.

* £ 332,927.
† £ 164,576.
‡ £ 207,688.

Another passage may be quoted as relevant to the present issue:—

Page 72.

"Besides the distresses which, as before mentioned, had befallen a large portion of the principal zamindars and the continual advertisements which were made in the public newspapers of lands on sale for the recovery of arrears, the territorial revenue was so far from being realized with the facility and punctuality deemed necessary, that some of the Members of the Board of Revenue, in consequences of the heavy balances which at this time occurred, went so far as to recommend and strongly to urge a recurrence to the former practice of confining the landholders for enforcing the payment of arrears.

Minute recorded by the President of the Board of Revenue, dated July 1799.

"This the Government declined adopting, on the ground that it would have a tendency to degrade the characters, and weaken the authority and respectability of the landholders, and thereby deprive them of the influence derivable from personal exertion, at a moment when the state of their affairs rendered personal exertion most necessary for their relief. The Government was of opinion that the fear of losing their estates, which were liable to sale to liquidate the balance of revenue, would operate more powerfully with the zamindars than any considerations of personal disgrace."

70. That the landholders did not appreciate the views of Government is apparent from the following extract from a letter from the Collector of Midnapore of 12th February 1802, regarding the operations of the regulations for collecting the revenue from the zamindars:—

Fifth Report, page 76.

"All the zamindars, with whom I have ever had any communication in this and in other districts, have but one sentiment respecting the rules at present in force for the collection of the public revenue. They all say that such a harsh and oppressive system was never before resorted to in this country; that the custom of imprisoning landholders for arrears of revenue was in comparison mild and indulgent to them; that though it was no doubt the intention of Government to confer an important benefit on them by abolishing this custom, it has been found by melancholy experience that the system of sales and attachments, which has been substituted for it, has, in course, of a very few years, reduced most of the great zamindars in Bengal to distress and beggary, and produced a greater change in the landed property of Bengal than has perhaps ever happened in the same space of time in any age or country by the mere effect of internal regulations."

71. It will now be expedient to trace the exact course of legislation in respect of the measures sanctioned for the realization of arrears of revenue.

The provision made for this purpose at the Permanent Settlement (section VII of Regulation I of 1793) has already been quoted in paragraph 67 above.

Regulation XIV of 1793.— Section II described what constituted an arrear of revenue, *i.e.*, the whole or portion of an instalment payable in any month remaining unpaid on the 1st of the following month. Section IV laid down that if any proprietor or farmer should omit to discharge the whole of an arrear of revenue by the period limited in a written demand, the Collector, unless the defaulter should have fallen in arrear so as not to have paid a third part of the instalment of any one month by the 15th of the ensuing month, was authorized to cause him to be confined or not as might seem advisable; but if any proprietor or farmer should not have discharged a third of the instalment of any one month by the 15th of the ensuing month, and should have omitted to pay within the time fixed in a written demand, or should have fallen in arrears to the amount of two thirds of the kist of any one month, and omitted to pay within the time allowed by a written demand, the Collector was positively enjoined to cause the defaulter to be imprisoned.

Section VI.

On such imprisonment the Collector had to depute an amin with a proper establishment of officers to collect the rents of the estate or farm of the defaulter. (This has been described as a virtual attachment.)

Section VII provided that the defaulter might be charged with interest on the arrear at the rate of 12 per cent. per annum, and section VIII allowed the Collector to suspend his powers of confinement if the crops in any estate or farm should have been damaged or destroyed by drought, inundation or other calamity of season, or from any cause not originating in the neglect, mismanagement or misconduct of the proprietor or farmer.

Sections XIII, XXII and XXIV.

At the end of the year if the arrears with interest were not liquidated either by the amin's collectors or by the payments of the defaulter, the landed property of the latter in whole or in part, and, if a farmer who had given security, the property of his surety as well, was liable to be sold with the previous sanction of the Governor-General in Council on a report of the circumstances of the case. Power was also given to sell at any time previous to the close of the year in which the arrears might become due.

By section XLIV, if the proceeds of the land subject to the payment of reveuue were not equal to the demand against the defaulter, any other real or personal property of the defaulter was to be attached and sold to make good the deficiency. Section XLVIII exempted certain classes of proprietors from imprisonment.

The Regulation also provided that the proprietor or farmer denying the whole or any part of the arrear claimed from him, and giving security to institute a suit in the Zillah Dewanny Adawlut, within 10 days, to try the justness of the demand and pay the amount adjudged against him with interest and costs, was allowed to stay the process against him, whether imprisonment or a sale of property, until judgment was given in the Zillah Court. There being reason to believe that many proprietors and farmers had availed themselves of these provisions (Sections IX, X, XI, XIV, and XXII) to withhold payment

of what was due from them merely to gain the time unavoidably incident to a judicial trial, they were repealed by Regulation III of 1795.

Regulation III of 1794.—Section I opened with a statement that from the earliest times the rulers of these provinces had exercised a discretionary power of confining proprietors of land who have failed in the discharge of the public revenue, in addition to attaching and disposing of their property to make good the deficiency, but that the Governor-General in Council considered their property alone a sufficient security for the public dues, and desired to refrain from every mode of coercion not absolutely necessary for realizing them.

Section II required every proprietor and farmer to pay in the instalment of each month on or before the 1st of the following month without waiting for the amount to be demanded.

Sections III and XIV declared proprietors not liable to be confined for arrears of revenue except in cases where the amount due from the defaulters might not be recoverable by the public sale on their lands and other property. Section IV provided for the levy of interest at 12 per cent. per annum on the arrears as a penalty, and sections V to X provided for the attachment and sale with the sanction of the Governor-General in Council of the lands of any defaulter from whom the whole or a portion of the instalment of any one month might remain unpaid on the 15th of the following month, land might not be paid on a written notice from the Collector within a fixed period.

On the whole the provisions of this Regulation seem more stringent than those of Regulation XIV of 1793, but they failed to secure the punctual realization of the revenue. The frequent and successive sales of land within the current year under this Regulation were found injurious both to the proprietors and to the public revenues. Considerable delays also occurred in the payments of many of the landholders, who, taking advantage of the delay attending the process for disposing of their lands, withheld payment of their instalments until the day appointed for the sale, and then, there was reason to believe, bought in their lands *benami*.

Regulation V of 1796 chiefly dealt with the sale of lands by distinct lots, and *Regulation XII of* 1796 merely increased the amount of the deposit at public sales.

Regulation VII of 1799.—This Regulation was enacted with a view to obviate the evil consequences which attended Regulation III of 1794, and to establish a more certain and easy process for enabling landholders and farmers to realize their rents, and the officers of Government to enforce payment of the public revenue without having recourse to sales of land till the close of the year. Sections II to XX laid down the procedure for enabling landholders and farmers to realize their rents with promptitude and facility. Section XXI referred to the motives which had led Government to discontinue imprisonment, and for which they forebore to renew the usage thereof, as a means of realizing revenue except in cases of necessity, and section XXII rescinded sections IV to VII, IX and X of Regulation III of 1794.

Section I.

Section XXIII authorized the levy of interest on arrears at the rate of one per cent. per mensem without special sanction. If arrears were not paid by the 1st of the month succeeding that for which they were due, the estate of a proprietor or a portion of it might be attached; and, in the case of farmers, besides attachment, provision was made for the arrest of their persons. If the arrears due and the interest thereon and costs were realized within the year, the attachment was to be immediately withdrawn; but if any arrears remained due at the close of the year, sale of the land of a defaulter was to be resorted to, to be supplemented, if insufficient, by sale of his other property, or by imprisonment of his person. In the case of farmers defaulting, any land or property belonging to the defaulter or his surety might be brought to sale as soon as possible after the close of the year, and his lease might be cancelled.

The Collector had power to suspend resort to coercive process in cases of drought, inundation, &c., and the Board to suspend the enforcement of the current kist, but remission could only be granted with the sanction of the Governor-General in Council, who also could order sale during the year in special cases.

Section XXVII kept alive section XLVIII of Regulation XIV of 1793 as to the exemption of certain classes of landholders.

The following comments were made* in the Fifth Report (1812) upon this and subsequent legislation:—

*Pages 78-79

"The power of the Collector over defaulting landholders is strengthened by the discretion allowed him to arrest, and for a limited time to imprison their persons without any reference to the judicial authority presiding over his district.

These alterations, as far as they depart from the rules originally introduced, appeared to be, in the same degree, a recurrence towards the system which was in former practice; but however that may be, they are acknowledged to have proved highly salutary; and if their operation may be judged of from the improved state into which the affairs of the Revenue Department have subsequently been brought, their efficacy for the purposes proposed must be fully acknowledged.

It appears from the correspondence with India, subsequent to the introduction of the improvements in question, that the balance outstanding at the close of each succeeding year, down to the latest advices, has greatly diminished; and the ultimate balances, part of which are still recoverable, become less than one-half per cent. upon the whole amount of the public assessment. The exposure of land for sale for the recovery of arrears has of course been, in proportion, less frequent; and it seems reasonable to infer that the value of land has risen in consequence of its coming less abundantly to market for sale. These are incontestable proofs of the regularity with which the different parts of the revenue system are at length become adjusted; and of the ability of the country to produce the amount of revenue which was assessed upon it under the permanent settlement."

Regulation 1 *of* 1801.—The next modification of the law is found in Regulation 1 of 1801. Section I explained that the rules contained in Regulation VII of 1799 for the more punctual collection of the land revenue by attachment of the lands in cases of arrear, and by a sale of them at the close of the year, although partially successful, had been partly deprived of their effect by indiscriminate attachments without due regard to clause 7, section XXIII† of that Regulation, and by delays in bringing portions of estates to sale. The object of the new Regulation was described to be to explain and amend existing rules, to bring into force under restrictions the rule established in Benares for the distress and sale of the personal property of defaulters when necessary, to expedite sales for arrears, and some other matters which need not be noticed here. The changes introduced were that Collectors were not to attach estates during the first three months of the year without the express sanction and order of the Board, nor subsequently, except in particular cases, *e.g.*, with a view to introduce payment of arrears, to prevent misappropriation of the remaining rents of the year, or to obtain accurate information as to the assets of the estate in order to dispose of a portion at the close of the year. The entire estate was to be attached, not a portion merely. When attachment was considered unadvisable, but revenue was wilfully withheld, or arrears were due to the neglect, mismanagement or misconduct of the defaulter, the Board were empowered to impose a penalty of one per cent. per mensem on the arrear in addition to the prescribed interest in lieu of attachment.

† For suspension of powers in cases of drought, inundation, &c.

Section III provided for the issue of an order by the Governor-General in Council for the immediate sale within one year of the lands and other property of the defaulter for arrears due, on his failing to give proper accounts of lands attached after written requisition, and section V allowed of the sale of a whole estate instead of only such part as would liquidate the arrear, or, if accounts were rendered before the day of sale, then a fine might be imposed by the Governor-General in Council. Section IV gave the Board of Revenue power to order distress and sale of the personal property of defaulters, whenever from the small extent, dispersed situation, and inconsiderable produce of estates, it was considered inexpedient to attach them.

By section VI the Board were empowered to cause the sale of entire estates of which the sadar jama did not exceed 500 sicca rupees, and in certain cases of estates of higher value, the surplus produce to be paid to the former proprietor. Sales were ordinarily to take place within the first or second month after the expiration of the year for which the arrear was due (section IX). No fractional portion of an estate was to be sold for arrears of revenue as joint undivided property without the express sanction of the Governor-General in Council (section XI).

Regulation V of 1812.—The opening section stated that circumstances had occurred which rendered it necessary to explain the real intent and meaning of the existing rules regarding sale of estates for the recovery of arrears of public assessment, and to annul the existing provisions for levying in certain cases a penalty of 12 per cent. in addition to the established interest on arrears of revenue, and at the same time to provide more generally for the levy of such interest. Accordingly sections XXV and XIXV provided that sales of entire estates were not liable to be annulled by the Courts on the ground that some of the sharers had not obtained possession, nor on the ground of the proceeds having materially exceeded the arrears due. The decision on the expediency of selling entire estates or particular parts was declared to reside in the Board of Revenue and Board of Commissioners respectively, subject to the control of Government. Section XXVIII rescinded, on the score of inconvenience having been experienced by a complex demand, the provisions* for the levy of the 12 per cent. penalty in addition to interest, and enacted that when proprietors and farmers failed to discharge the instalments of each month on or before the first of the month following, they should be uniformly charged with interest at 12 per cent. per annum without any authority to a Collector to allow any remission of such interest, the power being reserved for the Board of Revenue and the Board of Commissioners.

* Section II, Regulation I of 1801

Regulation XVIII *of* 1814.—Section II enacted that whenever any portion of an instalment of revenue payable in any month remained undischarged on the first of the following month, the Collector might cause a written demand to be served on the defaulter, or even without such demand, might advertise the defaulter's lands for sale without the previous sanction of the Board of Revenue or Board of Commissoners, if the land constituted the defaulter's entire estate or the whole of the defaulter's rights and interests in a joint estate. The Collector was required to report the matter to the Boards mentioned, and to await sanction before proceeding to actual sale. The Board could give sanction without previous reference to the Governor-General in Council, except in cases where the question of political expediency or danger to the peace of the country arose to create doubts as to the propriety of having a sale.

Section IV

Regulation XI *of* 1822.—This Regulation introduced a change. By clause 2, section II, the provisions of previous Regulations for the issue of a notice of demand or for the attachment and management of estates or farms of defaulters previous to bringing their property to a public sale, were rescinded, also any rules which restricted the powers of revenue officers in selecting lands for sale for arrears of public revenue, or the period of sale; section III after alluding to the regulations of Government which made the estates of proprietors under engagements with Government primarily answerable by public sale for any arrear in the monthly payments, declared that Collectors of land revenue should, with the sanction of the Board of Revenue, or other authority exercising the powers of that Board, be entitled to have recourse to sale for the realization of any arrear or interest thereon or other revenue demand that might be due, whether any other revenue process should or should not have been issued, and at any time of the year when the same might be unpaid, subject only to such rules and restrictions as were specifically prescribed in this or any other regulations, and powers were reserved to the Governor-General in Council to impose such further restrictions on sales as might from time to time appear necessary. Estates while under the Court of Wards were declared not liable to sale, and under certain circumstances joint estates and estates under attachment were only to be sold at the end of the year. Section V specified the conditions necessary to validity of sales. It is unnecessary to enter into the details of the procedure to be observed before, at, and after sale. Many of the chief provisions of this Regulation have been reproduced in later legislation.

4th clause.

Regulation XII *of* 1824.—In 1824, it having been found that zamindars wilfully neglected to pay their revenue and causelessly withheld the public dues till their estates were put up to sale, Regulation XII was passed, and revived the penalty of 12 per cent. per annum in addition to the prescribed interest to be realized when imposed by the Board of Revenue as an arrear of revenue.

Regulation VII of 1830.—By section II the provisions of previous enactments for the realization of interest and penalty on arrears of public revenue were rescinded. Section III dispensed with the transmission of sale advertisements by the Collector for the previous sanction of the local Commissioner of Revenue, and section IV authorized Collectors to advertise estates in balance for sale and to proceed to actual sale without any previous reference to the local Commissioner. No sale was, however, to become final without the confirmation of the local Commissioner, or, in cases of appeal, by the Sadar Board of Revenue. By section VI estates in arrear, unless specially exempted by a Commissioner or the Sadar Board, were to be invariably advertised at the expiration of one month from the date of the arrear, and sale was to take place in one month from date of advertisement, unless postponed by the Collector. By section VIII penalty and interest were consolidated into one demand at the rate of 25 per cent., and the Collector could not remit or reduce the rate of this demand without the special authority of the local Commissioner or the Sadar Board.

Act XII of 1841.—The preamble to this act stated that it was deemed expedient, with a view to the benefit of the agricultural community, to regulate the number of periodicals sales for arrears of revenue, to discontinue the levy of interest and penalty upon such arrears, to provide for the sale at fixed and known periods of mahals, the whole of the land revenue due from which might not have been discharged on or by appointed days, and otherwise to amend the laws for the realization of land revenue. Section II (part of which is still in force) laid down that there should be no demand of interest or penalty upon any arrears of land revenue falling due after the 1st January* 1842. Section III provided that the Sadar Board of Revenue at Calcutta should fix for permanently-settled districts the dates in each year, on which should be commenced the process of realizing by sale of mahals the arrears of land revenue due thereon, and section V defined an arrear to be any portion of an instalment of any month of the year unpaid on the first of the following month. By section IV no sale was to take place without the special sanction of the Sadar Board previously obtained in each case. Section VI provided that all estates (with certain exceptions) from which at sunset of the day preceding that fixed for a sale an arrear of revenue might be due, should be sold by public auction on the fixed day or days following, and no payment or tender of payment made subsequent to sunset of the day preceding the fixed sale day, should bar or interfere with the sale.

*Section XXXV.

Section VII laid down that no claim to abatement or remission of revenue, unless allowed by Government, nor any claim to a set-off against Government, should bar or void a sale, nor should money in deposit act as a bar to sale unless certain conditions had been complied with. Section IX allowed non-proprietors to make a deposit to save the estate from sale. It is unnecessary to summarize the whole Act.

Act I of 1845.—The provisions of this Act in respect to sale of estates for arrears of Revenue closely resemble those of Act XII of 1841 But they differed in order of arrangement and certain points. While Act XII provided for fixed days for sale, Act I provided for the fixing of latest days for payment. By section III such latest days were to be fixed for permanently-settled districts, and sale was to follow default in payment. By section IV the Board in authorizing sales in districts not permanently settled, were to fix the latest day on which in each case arrears or demands would be received.

Section V. -In the notification of sale the latest day on which payment of the arrear would be received was to be mentioned.

Section VI.—Then came the notification fixing the date of sale. No payment or tender made subsequent to sunset of the latest day of payment was to bar sale.

Section VII —On an estate being notified for sale, a proclamation was to be issued forbidding raiyats and under-tenants to pay rent to the proprietor from the date of the day after that fixed for the last day of payment. (In Act XII, section XVII, the proclamation was to be made after sale.) Section XIV provided for the holding of sales on the day fixed.

The other sections of the Act need not be noticed.

In his "Regulations of the Bengal Code," Mr. Justice Field wrote:—"Such were the provisions of Act XII of 1841.—* * * These provisions were re-enacted with slight modifi-

*Page 95

cations four and-a-half years afterwards in Act I of 1845, and are still to be found in almost their original form in Act XI of 1859, that existing sale law for the Lower Provinces of Bengal. Thus the legislation of 1841, forty-eight years after the Permanent Settlement, at length settled the general principles by which sales of land for recovery of arrears of revenue were to be regulated. When, eighteen years afterwards, in 1859, fresh legislation was considered advisable in connection with this subject, the occasion for such legislation arose, not so much from any necessity of altering what had been done in 1841, or remedying defects which time had brought to light in the working of the law as then settled, as from the expediency of affording protection to new interests which had sprung into existence during a further period of progress and prosperity."

Act XI of 1859.—The purposes for which this Act was passed are stated in the preamble:—

I.—To afford security to persons who have liens upon estates, and who pay the money necessary to protect such estates from sale.

II.—To afford sharers in estates, who duly pay their proportion of the revenue, easy means of protecting their shares from sale by reason of the default of their co-sharers.

III.—To afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates by reason of the neglect or fraud of their agents.

IV.—To provide for the voluntary registration of dependent taluks existing at the time of settlement.

V.—To protect the holders of registered under-tenures created since the settlement, and not resumable, from loss by the avoidance of their tenures by the sale of the estate; and to give absolute security to such tenures by special registry, when shown to be held at a rent sufficient for the security of the revenue.

It made no change in the leading principle of the previous legislation, viz., that arrears of revenue were to be recovered by sales of estates or of shares of estates.

72. The operation of the sale law was discussed in Chapter IX of Mr. McNeile's Memorandum on the Revenue Administration. It was there stated that sales rarely take place owing to the inability of the proprietors to pay the Government demand except in cases of diluvion.

Dated 16th June 1873.

Paragraph 116

Again, an opinion was expressed that it would be most inexpedient to alter a law with which the people have become thoroughly acquainted, and under which the Government revenue is realized without oppression, and with but very rare instances of individual hardship, and those such that in the majority of cases the local authorities have the power to remedy. Again (paragraph 117):—

Paragraph 116

"The immediate result of the decennial settlement was no doubt prejudicial to many of the large landholders. The assessment then imposed was in many cases excessive; difficulty was consequently experienced in collecting the Government demand, and many harsh and severe measures had to be enforced for that purpose, even to the extent of rendering the defaulting proprietors liable to imprisonment and disgrace."

Then, "again, the sale laws (Mr. McNeile wrote) act beneficially in affording the proprietors a means of obtaining, by the security of title which the law affords, the very highest value for their property; while the punctuality with which the Government demand must be met, under the forfeiture of the estate in arrears, induces habits of forethought and thrift, and tends to check the spirit of extravagance and recklessness which a knowledge, that under a less stringent system the payment can be deferred from time to time, is apt to create."

Paragraph 118

73. The following paragraph 122 of Mr. McNeile's Memorandum is also worth quoting in this connection:—

"The present law is not regarded favourably by those who have had experience of the 'dustuk' system under which the revenue is collected in some other parts of India. The operation of that system, however, in Orissa, where

it was in force up to 1853, was, as already stated, extremely unsatisfactory. It there induced habits of carelessness and extravagance, by leading the proprietors to believe that they could stave off from time to time their payments to Government, and it led, from the exactions of the peons in whose hands the enforcement of the payment practically lay, to double and treble the amount of the Government demand being finally paid by the proprietors of petty estates, the excess never reaching the Government covers. It may, of course, be retorted that good management on the part of the Collector should prevent such exactions, but the fact is that effective control in such a matter is impossible in Bengal, in the absence of any trustworthy mufassal staff, whatever it may be in provinces where the Collector is thus supported and assisted. The introduction of the Sale Law into Orissa resulted to the entire satisfaction of the people, and after the first year or so, when they became thoroughly conversant with the law and its requirements, sales became very infrequent. It is believed that very few have since occurred, except where proprietors have allowed their estates to fall into arrear for the express purpose of bringing them to sale."

74. It remains, after this analytical review of the history of the Revenue Sale Law, to mention the opinions of the present Revenue Officers of Government.

The suggestion of the Government of India—that provisions for the arrest of a defaulter and distraint of his moveable property should be inserted in both the Bills, and that these measures should be resorted to before immoveable property is sold—has hardly received the support of a single officer in the case of the Revenue Sale Law Bill, and has been the subject of other comments in the case of the other Bill. In the case of the former, the following main objections, which to some extent overlap one another, have been advanced:—

(1) The permanent settlement is exceedingly light, and, in consideration of the fixity of the tenure, punctual payment of the revenue was made a condition, with the penalty of sale for default. The proprietors therefore are not entitled to be excused the only condition of the contract that is favourable to Government, nor should Government be called upon to undertake the risk, expense, and delay attendant on the proposed plan. (The writer of this criticism appears to have overlooked the fact that the provisions under discussion were intended to facilitate collections, not to favour the proprietors.)

(2) The provisions would, by introducing two procedures, retard payments in place of facilitating them. The principle that the land is responsible for the land revenue is well established and has worked well. Estates are all perfectly able to pay their land revenue, and arrears are chiefly due to the absence of penalty. The infliction of fines for delay will have the best effect in reducing arrears of land revenue on permanently-settled estates. The provisions are not needed to secure the payment of the land revenue.

(3) Public feeling in Bengal would be strongly opposed to the arrest and imprisonment of a landholder for arrears of land revenue due from him before selling his estate. It is well known that the practice formerly existed, but was abandoned. The abolition of arrest was popular and politic, though arrears were greater when arrest was abolished than they now are. Only the smaller tenants (in khas mahals and Wards' estates) would prefer imprisonment to sale of immoveables. Zamindars who have some claim to gentility would regard it as derogatory to their status.

It is a question whether this objection does not prove more than its author intended. If the zamindars will pay up their land revenue to avoid what they consider the insult of imprisonment, while the Sunset Law (for the sale of estates) is inadequate to make them all pay their dues (light as they are), is this not an argument for the adoption of the more forcible procedure?

(4) The tendency of modern legislation on the subject of imprisonment for debt is opposed to the provisions suggested. This point will be further dealt with below.

(5) The present system of holding the estate liable in the first instance is the most effective method of securing prompt payment, and it would be no real boon to the defaulter to proceed first against his person or moveable property. The former would not be practicable or desirable on a large scale; the existence of numerous shareholders—often secluded females—makes it sometimes impossible to proceed against all or many of the defaulters. Also where there are, as in the majority of cases, several joint-proprietors, it is both fairer and more convenient to proceed against the joint-property on which the demand is a special charge than to distrain the moveable property of individual members The estate is sold in only a small proportion of cases.

It has also been said that (*i*) such provisions are not necessary, as the estate itself is always available to meet the Government demand; (*ii*) the Sunset Law is efficient, and, save in rare cases, is not unreasonably severe; (*iii*) the land revenue would not be paid until coercive measures had been taken against the proprietors personally or their moveables; (*iv*) unnecessary expense to the parties and delay to Government would be entailed.

75. With regard to the provisions suggested, so far as they effect the recovery of public demands, it has been pointed out that Act VII (B. C.) of 1880, section 19, was already intended to incorporate the practice and procedure of the Code of Civil Procedure in the direction contemplated, and that section 21 of the amending Bill has more explicitly set out for incorporation a number of the sections of the Code of Civil Procedure relating to attachment of property and arrest and imprisonment of the defaulters. The Board's rules at present * direct the observance under Act VII (B. C.) of 1880 of the High Court rules regarding the attachment of moveable property, and they distinctly enjoin that, while the High Court rules relating to the sales of immoveable property are to be binding on Collectors, the whole tendency of the certificate law is to proceed to sale only in the last resort, and to afford the judgment-debtor every reasonable opportunity of saving his property. The Board have expressed their belief that cases will seldom occur in which the actual sale of immoveable property in execution of a certificate is necessary. No reference is made in the Board's rules to the imprisonment of a defaulter. It is clear from these references that, while the existing Revenue Sale Law directs the sale of immoveable property as the first and only remedy, the Public Demands Recovery Act and rules together point to the sale of moveable property before immoveable property, and leave imprisonment out of the question. The provisions suggested by the Government of India cannot therefore apply with equal force to both these laws (and the practice under them) which differ so much from one another. It seems to the Board therefore that, even from the point of view of the Government of India, little is required in the case of the Bill to amend Act VII B. C.) of 1880. It would however be an improvement to add section 254 of the Code of Civil Procedure (which allows of imprisonment *or* attachment of property, moveable or immoveable, as alternative processes) to section 21 of the Bill, and to incorporate into the Board's rules further rules for imprisonment of defaulters, for use where such a measure is really required. Also as section 337A of the Code of Civil Procedure has been added to section 21 of the Bill, it would seem necessary to add sections 245A and 245B as proposed in paragraph 59 above. Paragraph 79 of the Board's Land Revenue Report for 1889-90 shows that 104 persons were imprisoned during the year for non-payment of Government demands, and that occasional resort to arrest has an excellent effect, especially on offenders among the respectable classes.

* The Certificate Procedure Manual, 1888, pages 22—26, section IV, rules 2, 3, and 6.

76. To return to the subject of imprisonment of defaulters.

The debates in the Legislative Council of His Excellency the Governor-General in connection with the Bill which become law as the Debtors' Act, VI of 1888, on the dates mentioned in the margin, shows that imprisonment for simple debt is a thing of the past in all civilized countries, and is only retained as a punishment for conduct either fraudulent or recalcitrant, and that several Honourable Members of the Council, as also many of the authorities consulted, would have preferred to abolish imprisonment for

9th June 1886.
23rd June 1886.
24th February 1888.
23rd March 1888.

debt altogether in India. It has been retained, however, in the Code of Civil Procedure as a means of enforcing decrees for money, but in the form modified by Act VI of 1888. It is worthy of notice, and especially in connection with the subjects now under report, that the only real opposition to the Debtors' Bill came from the Honorable Raja Peary Mohun Mookerji, C.S.I., who, speaking on behalf of the landlord's interest, moved an amendment (which was lost) to the effect that the Bill then under discussion should not apply to suits under the Tenancy Act, that is, he wished to preserve the power then enjoyed by the landlords to have their raiyats imprisoned on decrees in rent suits. The Honourable Member, in his speech, used the following words:—"In Bengal the Sunset Law and the certificate procedure place perhaps larger powers in the hands of the Local Government as regards the enforcement of its revenue demand. I do not for a moment contend that these exceptional procedures for the recovery of revenue demands are open to any serious objection, but I do most earnestly contend that those who have to pay the revenue should not be deprived, except in cases of absolute necessity, of any procedure which the law has placed at their service for the recovery of rents from their tenants." The whole tenor of the debate, and of the legislation then effected, was that a decree-holder should proceed against the property of the judgment-debtor rather than against his person. This apparently was adopted as the more lenient course. The conclusion that the Board therefore draw from the opinion of the officers consulted and from the facts and from recent legislation is that the proposals of the Government of India are not considered desirable in respect of the Revenue Sale Law, and that they have been provided for, with some small omissions, in the Bill to amend the Public Demands Recovery Act.

77. The question may be further considered in connection with the Revenue Sale Bill. The suggestion of the Government of India is evidently taken from the North-Western Provinces Land Revenue Act, XIX of 1873. A comparison of section 166 thereof with section 150 shows that a sale (of the patti or mahal in respect of which an arrear of land revenue is due) is to be resorted to only when the other processes, viz., those numbered (*a*) (*f*) in section 150, including arrest and detention of the defaulter and distress and sale of his moveable property, are, in the Collector's opinion, insufficient for the recovery of such arrear. The inference is that sale of the estate or share is regarded by the law as the severest method, while the other powers indicated are considered to be more lenient processes for the realization of the arrears. The proposal is therefore in the direction of leniency. The Board have not failed to observe that this suggestion is contained in a letter from the Government of India in which exception is taken to the lowness of the land revenue collections in 1888-89 in Bengal as compared with other Provinces. The Board will leave it to Goverument to judge whether greater success would have been attained by the adoption of more lenient methods if the severer processes have failed to give saisfaction. The legalization of several measures, which will (having regard to the history of the land revenue in Lower Bengal) be considered to be of a preliminary character only, will have the effect of adding a certain number of links in the chain of procedure: these will tend to delay and to the postponement of collections, besides opening the door to exactions in connection with the *dustuk* system as noticed above in paragraph 73. But at the same time the suggestion must be considered from another point of view. It has been recorded in paragraph 70 how in 1802 the zamindars considered the custom of imprisoning landholders for arrears of revenue to be mild and indulgent in comparison with the system of sale of estates introduced with the Permanent Settlement. Whether this was their real opinion at the time or merely a figure of speech it is impossible to say. But it may be safely anticipated that the disgrace attaching to personal arrest and imprisonment would now be put forward, and urged with all possible vehemence, by the landlords interested as a reason for not agreeing to the Government of India's suggestion until all other methods for the collection of the land revenue have been found wanting.

78. The question—which process for the recovery of dues is more lenient than another appears to admit of no certain reply. According to the North-Western Provinces Act the arrest and detention of the defaulter are more lenient than sale of the immoveable property: according to the debate on

the Debtors' Act, 1888, imprisonment is regarded as the harsher measure. In the Board's opinion there is no necessity to decide this point as an abstract question in Bengal. The two Bills as drafted provide different remedies for recovery of the dues of Government—(1) the Sunset Law in respect of the land revenue demand; (2) the Code of Civil Procedure for other public demands. About the latter nothing more need be said, as it is not proposed that Government should assume greater powers (as compared with private individuals) than it already possesses for the recovery of its dues. As to the former, the analysis of the history of the Revenue Sale Law, which has been given above, shows that coercion and distraint have been tried in every shape and deliberately given up, so that the revival of imprisonment for default of payment of land revenue would be avowedly a retrograde measure. The liability to it would be felt by respectable zamindars as a slur on their class. The same objection does not apply to it in the case of the comparatively petty judgment-debtors against whom the Code of Civil Procedure has been and is to be enforced. Nor does it seem necessary or desirable to legalize imprisonment as a means for levying the land revenue demand, except in one special case which will be mentioned. The Legal Remembrancer is of opinion that "the arrest of the defaulter might be allowed in the Public Demands Act. In the Revenue Sale Law it would be perfectly useless. The estate pays the revenue, is liable for the revenue, and can be sold for the arrears of revenue; in nine cases out of ten, no one knows who the defaulter is." The Board think it far better to work upon the long-established main principle of the Land Revenue Sale Law that the estate itself and not the person of the owner is responsible for the satisfaction of the Government demand. The only case in which they would legalize imprisonment of the defaulter would be in the event of the voidance of the encumbrances being rendered necessary on the sale of the estates under the circumstances described in paragraph 38 above. In such case they consider that imprisonment should be cumulative, and not only an alternative form of punishment, as the defaulter's conduct would presumably be fraudulent. There can be no question that estates are easily able to pay the land revenue assessment imposed upon them nearly 100 years ago. Detailed proof of this statement is not required. The proper course, it seems to the Board, is, before adopting imprisonment generally as an additional or an alternative remedy, to carry out the existing law more strictly. They apprehend that there is no little force in the criticisms which have been passed by zealous revenue officers on the lenient policy of the Board and Government of late years in respect of exempting defaulting estates from sale for arrears of revenue. If it were possible, they would prefer a much stricter system whereby on the occurrence of an arrear, the legal remedy in the hands of Government should follow as a matter of course, as regularly as the night follows the day, with the certainty of the operation of the laws of gravity. But as the door has so long been opened to appeals (against sale of estates for arrears) on the ground of hardship, and as all human agents are and will remain fallible, the Board cannot but recognize that so absolute a sequence of sale to an arrear cannot be insisted upon. They would, however, advocate the adoption of a stricter procedure; in other words, that pleas of hardship should not be so easily accepted. At the same time it may be expected that the infliction of a heavy penalty, stereotyped by law, on the exemption of an estate from sale for arrears, will have a very salutary effect in inducing punctuality of payment. But until these remedies—(1) strictness, (2) a penalty—have been tried and found inefficacious, the Board cannot recommend a revival of the system of imprisonment of zamindars for default in payment of land revenue. They cannot, on the other hand, accept distraint of moveable property in the first instance as a sufficiently forcible remedy. It would be a departure from the main principle above mentioned; it would only prolong instead of shortening the chain of procedure; and it would probably fail of effect, either as a deterrent or as a punitive measure.

79. In conclusion, the Board desire to record their acknowledgments of the material assistance they have received from Commissioners and District Officers in dealing with the Revenue Sale Law and Public Demands Recovery Amendment Bills, and to express a hope that this report may prove serviceable

to Government and the Legislature in proceeding with the contemplated legislation on these important subjects.

Dated Calcutta, the 20th June 1891.

From—Babu Surendra Nath Banerjea, Hony. Secy. to the Indian Association,
To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your letter No. 2226—853L.R., dated 26th June 1890, I have the honour to submit the following observations, which embody the views of the Association on the proposals of the Government to amend the Public Demands Recovery Act and the Sale Law. I must apologize for the delay that has taken place in submitting this report; but the subject is one of very great importance, and has necessarily claimed very careful consideration. The Committee propose to submit their observations section by section.

NOTES ON PUBLIC DEMANDS RECOVERY BILL.

Section 6.—The section enables the judgment-debtor to contest the certificate on the sole ground that the arrears were not due by him, and yet provides that non-payment of the amount claimed, within a limited time, would be a bar to such a suit. It seems to the Association rather hard that a man who denies his liability to pay should be compelled to deposit the same before he is allowed to come to court, remembering that it is neither easy nor inexpensive to obtain back money once deposited in court. Under the Bengal Tenancy Act, unless the tenant admits liability, the tenant is not only not required to deposit any amount, but is allowed to contest the suit on other grounds.

Section 7.—Demand under section 49 of Act IX of 1880 should be left to be realized by contribution suits (*vide* the Association's opinion on section 16 of the Revenue Sale Law Bill).

Section 9.—The Association is of opinion that no *ad valorem* court fee should be levied. In the first place, the matter in dispute is decided summarily, and in such cases no *ad valorem* fee is levied by the Civil Courts. In the second place, the debtor will have to pay court-fee over again, if he institutes a suit as provided by section 15. At any rate it may be provided that half the court fee should be realized in the Certificate Procedure, and the other half in the Civil Court at the time of a regular suit, if any.

Section 16 (1).—The Association would propose the following change. For the words "making of" the words "service of notice under" should be substituted. The reason is obvious, because if a man has paid the amount between the time of the issue of such certificate and the service of notice thereunder, he should be allowed to avoid the certificate, say on payment of such costs as the Court thinks fit.

Section 18.—It would be preferable to provide that appeals shall lie to the District Judges who have more experience of civil work than Collectors or Commissioners. This would also sensibly lessen the number of original suits after the decision of Revenue officers in certificate cases.

Section 20.—The Association would suggest the addition of the words "if any allowed by the certificate collector before the certificate became final" after "costs." The rate of interest should also be limited by the Act.

Section 21.—Under the provisions of the Bill, certificates may be filed for small sums of rent due to Government from tenants of khas mahals, or to Managers of estates under the Court of Wards from raiyats. The Association is of opinion that there should be a provision that certificates for sums under Rs. 500 should not be enforced after the lapse of three years from the time when they became enforceable. A similar wholesome provision exists in the Bengal Tenancy Act, which affects even *minor* decree-holders, and the Association fails to see why poor raiyats, who happen to hold under Government, or under the Court of Wards, that is to say, under landlords who can better afford to sustain any loss, should be placed in a worse position. The reasons in the case of ordinary decree-holders apply equally to the case of certificate-holders. It is true that every facility should be afforded to Government to realize money due to it, but the provision in the Bengal Tenancy Act proceeds upon the assumption—an assumption which seems very just to the Association—that raiyats who have not been able to satisfy the small decrees against them in three years, are really unable to do so, and that to keep the decrees hanging over their heads for a longer time would do no good, and would perhaps discourage them pursuing their avocations.

Section 22.—No reason has been assigned for omitting section 234, C. P. C. A certificate-holder should be allowed to enforce it against the representative of a deceased debtor, of course to the extent limited by that section (*vide* also section 252, C. P. C.).

The Association is further of opinion that there should be some provision similar to section 295, C. P. C. For, in a case where two managers of two different estates under the Court of Wards make requisitions for certificates against the same person, and being unable to realize the money from the respective tenures, proceed against the same property, *i.e.*, in respect of which there is no priority as between them, then there is no reason why the proceeds of the sale should not be rateably distributed between them.

Clause (9).--Sections 328 to 333 are not applicable to executions of certificates for money. They are relevant to the present Bill only in so far as they contain the procedure to be followed in cases arising under sections 334 and 335.

Section 31.—This is an important section, and the Association is of opinion that service under registered covers would be more effectual and less expensive. It is an open secret that when processes are served at the instance of private parties, the serving peons get some bonus from them for doing what they are bound to do. But when these peons are required to serve processes on private persons at the instance of the Collector without any hope of remuneration whatever beyond their pay, it is not at all unlikely that they would do their work perfunctorily and even dishonestly, and make false returns; for the debtor might easily bribe them to say that he could not be found—which could not happen in the case of a private individual, where the peon is generally accompanied by some one interested in the serving of the process. The result would be injurious both to the debtor as well as to the Collector. The debtor may lose his property, or may incur liability without any notice to him, and the Collector would probably have his dues unpaid, and his proceedings contested in a regular suit for want of notice, which would not be the case if notices were properly served. Further, peons are not unfrequently suspected of doing their own private work, instead of going to distant parts of the country to serve notices, and then making false returns.

NOTES ON THE REVENUE SALE LAW BILL.

Section 3.—The definition of "tenure" and "independent tenure" is objectionable. It extends the Collector's jurisdiction to bring property to summary sale under the provisions which follow, *vide* section 7. The Association is of opinion that when a tenure is created by Government under an instrument in writing, the liabilities of the holder of such a tenure should be determined, and the remedies for recovery of arrears should be enforced, under the Certificate Act, for otherwise the tenure-holder would have no opportunity to contest the Collector's demands except when it might be too late for him to do so. Moreover, there may be questions regarding the construction of the document.

Section 4.—There seems to be a little ambiguity here. Suppose the lands comprised in a tenure were in two districts?

Section 10.—This is the real notice of sale as being published on the spot. But the section makes no provision as to when, *i.e.*, how long before the day of sale, this notice is to be published. As the section stands, publication a day before would meet requirements of the law. But it would hardly be sufficient notice to the landlord or other persons interested in protecting the property so as to enable them to avail themselves of the provisions of the following sections; nor would it be sufficient notice to bidders from the mufassal. It is said that monied men live in towns, and that publication of notices in the Collectorate, &c., would be sufficient notice to such persons. But it must not be forgotten that notice of sale is often conveyed by raiyats of the defaulting estate who generally happen also to hold lands in neighbouring estates.

Sections 11 *and* 12.—These sections do not seem to have been properly framed. Suppose the arrears to be Rs. 6,000, then ⅛th of that is Rs. 750; *i.e.*, a man whose arrears are *more* than Rs. 5,000 escapes by paying *less* than one whose arrears are less than that sum, ⅛th of which is Rs. 1,250. Perhaps it would be better if the words "over Rs. 5,000" were added after "one-eighth" and the words "over Rs. 10,000" after "one-sixteenth."

Nevertheless the Association is of opinion that a discretion should still be left to the Collector to accept payment without fine in all cases where the persons paying the money are interested in the payment otherwise than as defaulting proprietors, or if the case is otherwise found to be hard.

Section 14.—Notice should be posted at least 15 days before the date of sale.

A lump sum should be realized *once for all*, *i.e.*, at the time of each application. It would be vexatious to pay a sum annually for this purpose, and the remedy might be worse than the disease, as it might lull the proprietor into a false sense of security with regard to his property.

Section 15.—These deposits should be exempted from attachment, or else notice of such attachment should be given to the proprietor, otherwise the result might be that while the proprietor believes his property to be safe from sale for arrears, the same might be sold behind his back when the securities have been attached or sold without his knowledge. Moreover, there ought to be a provision for giving notice no sooner the deposit is found insufficient for the next instalment.

Section 16.—This is an important innovation on the present law. The Association does not see any necessity for it The hardship felt is not more than when one of several judgment-debtors jointly liable under a decree is compelled to pay the whole amount due under such decree, and such persons may similarly claim a more speedy remedy. In fact, it seems to be less hard, for a proprietor of a share can always apply for the opening of separate accounts. It has been held by the High Court that suits for contribution are not triable by the Small Cause Courts, because they often involve questions of title regarding the shares, &c., and the Association does not think that matters would improve by investing an executive officer with powers to try such intricate suits. The section has no redeeming feature whatsoever, because *ad valorem* court fee stamps have to be paid all the same. It would be quite sufficient if it be

declared that such excess payment shall bear interest at 12 per cent. and shall be a first charge on the share, priority being given only to Government dues upon the share, and to *subsequent* payments under similar circumstances. The Association is of opinion that a better remedy would lie in offering greater facilities for the opening of separate accounts, such as reduced fees, &c.

Section 22.—Publication of notice in the manner provided by section 8 does not seem sufficient. The Association is of opinion that notice should be sent by registered letters to the co-sharers, as otherwise they may not be at all aware of the application.

Section 24.—The portion italicised may be necessary to avoid minute splitting of liabilities to pay revenue; but it must not be forgotten that Punchannagram holdings and other tenures which are held at low rentals, are valuable properties. Now, suppose one of two brothers, each owning half of such a tenure, has built a separate house on such tenure at his own risk, and that the other always neglects to pay his share of revenue, the result would be that the man who has built the house will always have to bring suits for the recovery of trifling sums or to bear the loss. The Association is of opinion that a substantial fee may be realized to balance the inconvenience. The Estate Partition Act would not help him—*vide* section 11, Act VIII of 1876.

Section 28.—This section is perhaps necessary. But the aggrieved party should have the right to have the matter finally settled in the Civil Court.

Sections 41 *and* 52.—These sections propose to make very important alterations in the present law. It should be remembered that under section 9 the notification must be published 30 clear days before the date of sale. The High Court has held that violation of the provisions of the section render the sale null and void in spite of section 8, Act VII of 1868. There can be no doubt as to the justness of this decision, because that is the only notification which is required by law to be published before a fixed time, otherwise the Collector might publish the notice the day before the sale, and under section 8 aforesaid claim that the sale was valid, although the property might have been sold for a nominal value, for want of notice and without the knowledge of the proprietor. Now, the sections under note propose to make it obligatory on the Collector to satisfy himself by personal inspection of the record that the requirements of the law were duly complied with, the Legislature probably being under the impression that this would render *impossible*, the occurrence of irregular sales. If the Legislature is correct in its assumption, then section 52 is redundant. But the real point is this, that in spite of the stringent provisions of section 41, irregularities might, and would not unfrequently, occur for various reasons. The Collector is not familiar with the language of the notifications, or of the returns made by the peons. He would in almost every case be unable to *read for himself* the returns, &c., and must have them read out by the amlas, who, if they have issued the process late, would always try to conceal their faults by misreading the same, &c., cases having sometimes occurred in which estates have been sold for no *arrears* at all. Under such circumstances it is not sufficient that the mere attestation by the Collector should leave the proprietor without a remedy after the sale certificate has once been issued. In fact section 8 aforesaid was very hard, and one might even say unjust, and its rigour has somewhat been mitigated by I. L. R., 11 Calc., 200. To meet this case, as the Legislature expressly says, the present provisions have been devised, but the Association is unable to see why the Legislature or the Government should attempt to devise means for upholding a sale which might be manifestly unjust or injurious. The patni sales are conducted by the Collector, but would the Government like to enact a similar provision in favour of the zamindars? The Legislature should also note that under the proviso to section 76, the Collector renders himself liable to action for damages which may sometimes be very heavy. The Association is of opinion that to render the sale absolute under such circumstances is likely to encourage the amlas to be less careful in such matters, and the best thing would be to allow the sale to be cancelled.

Section 46.—In preferring appeals the day of sale should be excluded so as to bring the law in conformity with the practice of the Civil Courts, which is generally known to the public. Morever, the sale may take place at the end of the day, in which case the day of sale is practically denied to the appellant.

Section 47.—The section seems a little vague. It is not clear whether it is a condition precedent to the annulment of a sale under this section that the defaulting proprietor should deposit the money required in *all cases*. If it is, suppose he does not do it, when the appellant is other than the defaulter?

Section 48.—The interest should in all cases be first paid by Government, otherwise the purchaser may not get it.

Sections 57 *and* 58.—In the fourth clause the Association would recommend the addition of the following words after the word "grounds,"—"roads for the use of the public."

Section 59.—"Purchaser as is aforesaid." The language should be clear enough to refer to the purchasers in both the sections, which is evidently meant.

Part VIII.

Section 82.—Zamindars generally have got their agents holding general powers-of-attorney from them, and in such cases notices might be safely and more readily served on them.

Section 83 (*b*).—As the section stands, there might be a third appeal in a case, which is undesirable It should be provided that an order passed by the Commissioner should not be appealable, but should only be subject to revision by the Board.

Section 88.—There ought to be some provision for the return of fees in case the application is rejected.

The scale of fees seems heavy as regards opening of separate accounts Considering that the entire estate continues ultimately liable, the fees should be considerably reduced.

No. 2322, dated Calcutta, the 29th August 1891.

From—H W. C. CARNDUFF, Esq., Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

WITH reference to the correspondence ending with your letter No. 465L. R., dated the 14th April last, I am directed to forward, for the information of His Honour the Lieutenant-Governor, the accompanying copy of a letter* which the Judges have addressed to the Government of India on the subject of the draft Bills prepared by Mr J. Beames, for the amendment of the Public Demands Recovery Act and the Revenue Sale Law applicable to the Lower Provinces of Bengal.

* No. 2321, dated the 29th August 1891.

No. 2321, dated Calcutta, the 29th August 1891.

From—H. W. C. CARNDUFF, Esq., Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of India, Revenue and Agricultural Dept.

WITH reference to the correspondence ending with the Hon'ble Mr. Benett's letter No. $\frac{911}{188-3}$ R., dated the 5th September 1890, I am directed to communicate the following remarks of the High Court on the subject of the draft Bills prepared by Mr J. Beames, for the amendment of the Public Demands Recovery Act and the Revenue Sale Law applicable to the Lower Provinces of Bengal.

2. The Judges are not prepared at present to express an opinion upon all the details contained in Mr. Beames' Bills, but propose to deal chiefly with such important questions of principle as, in their opinion, must be decided before the details can be finally decided.

3. I am first to refer to the *draft Bill to amend the Public Demands Recovery Act*, 1880, and it will be convenient at the outset to point out, in brief outline, the history of this branch of legislation. At the time when that legislation commenced, claims of Government were mainly of two kinds viz., claims for land revenue in respect of revenue-paying estates which fall under the Revenue Sale Law and will be considered hereafter, and claims for rent and other dues from tenants in *khas mahals*. By Regulations XVII of 1793 and VII of 1799, and subsequent legislation, the following were the powers granted to Collectors for realizing Government demands due by tenants in *khas mahals*. A Collector might institute a summary suit; he might attach the tenure and imprison the defaulter; he might sell the defaulter's land, if he had any permanent saleable interest in it, at any of the quarterly sales; and he might also, in the case of a *shikmi* tenure, sell it or other personal property belonging to the defaulter; or he might distrain. These provisions continued until 1859, when Act X, the Rent Act, and Act XI, the Revenue Sale Law, were passed. The former repealed the old Regulations above referred to; but the powers possessed by a Collector to realize Government demands differed very little from what they had been before. Collectors could still institute a summary suit for rent under Act X, or distrain; and they could still issue a *dustuk*, attach the tenure and imprison the defaulter, or sell the land or the tenure at the quarterly sales. This was the law up to 1868, and, as Mr. Beames puts it in his explanatory notes, "before 1868 sums due to Government by individuals could only be realized in the same manner as arrears of land revenue, that is, by the sale of the defaulter's estate, or by the still more tedious and expensive process of a civil suit. When a more summary procedure for the realization of such dues was introduced in 1868, it was treated as supplementary to the old procedure, and the two systems continued, and still to a certain extent continue, to be mixed up together."

4. In 1868 a new system of recovering public demands was introduced, which forms the basis of the existing certificate procedure. An Act of the Bengal Council, VII of 1868, provided that certificates of indebtedness might be issued by the Collector, having the force of decrees and to be executed as such; and the public demands, recoverable by means of this process, were at the same time defined. These, it was recited in section 1 of the Act, were all already recoverable as arrears of revenue, and they were declared to be sums due from public accountants or their sureties; sums due from sureties and farmers in respect of revenue; arrears of revenue; costs of partition and fines in connection therewith; certain costs of embankment; sums recoverable for loss on a re-sale under the Revenue Sale Law; arrears of water-rates; fines payable in particular cases; and any other demand which, by the law of the time being, might be made recoverable as arrears of revenue. It will be observed that the summary system of procedure thus introduced was at once made applicable to a considerable variety of claims, but that these all had certain characteristics in common. All were public demands in the strict sense of the term, and all were claims, the existence and the amount of which could be ascertained from public records under the control of the Collector.

5. In 1875, by a Bengal Act, I of that year, certain additions were made to the list of demands recoverable by certificate; but no very material change took place until the passing of Bengal Act VII of 1880, which introduced changes materially altering the whole character of the system. Under it the effect of a decree is given to the certificate of a Collector, not only in respect of public demands, but in the case of private estates in the hands of the Revenue authorities, in respect of claims between private individuals, in which the public has no interest whatever; and also in respect of claims not ascertainable from any public records, but capable of being properly determined only by evidence. The demands, somewhat inaccurately called public demands, to which the system applies, are described in section 7 of the Act. This section enumerates a number of specific claims as being recoverable by the certificate procedure, which it is unnecessary here to examine in detail, and it then proceeds to include those that follow:—

"(7) In the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue authorities on behalf of a private individual, any arrears of rent or of other demands recoverable as rent, whether such arrears become due before or after the management devolved upon such Court or such authorities: provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhanced rate has been agreed to by the person liable to pay the same, or has been confirmed by a competent Court.

"(8) Any sum payable to a public officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act.

"(9) Any fee, duty, tax or other demand which, by any Act passed hereafter, shall be declared to be recoverable under the provisions of this Act."

6. Not only did the Act of 1880 thus enlarge the number, and change the character, of the claims recoverable by certificate, but it also conferred upon Revenue officers extensive jurisdiction in many matters incidentally connected with the enforcement of certificates. The execution of a certificate, although it has the force of a decree, is entrusted, not to the Civil Court, but to the Revenue officers, and by section 19 such execution may be effected in all or any of the modes provided by the Code of Civil Procedure for the execution of decrees for money. The section applies to every execution issued in order to enforce a certificate, the whole of the practice and procedure provided by that Code "in respect of sales in execution of decrees; in respect of raising the amount of a decree otherwise than by the sale of immoveable property under the provisions of sections 305 and 320 to 324 of the Code; in respect of arrests in execution of decrees for money; in respect of the execution of decrees by imprisonment; in respect of insolvent judgment-debtors; in respect of claims to attached property; in respect of resistance to execution; and in respect of the execution of decrees out of the jurisdiction of the Courts by which they were passed." And although it was declared that the certificate could be issued only by the Collector of the district, it was at the same time provided by section 19 of the Act that, "subject to the control of the Collector, and save and except in respect of the provisions relating to insolvent debtors, any of the said duties (that is, duties connected with the execution of certificates) might be exercised by any Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to such Collector." A Collector can, therefore, under this section, exercise insolvency jurisdiction, a jurisdiction which is entrusted to no Civil Court of a lower grade than that of District Judge; and any of the Revenue officers named above may, under the procedure relating to claims, decide upon the rights of third parties who are in no way debtors to the Crown.

7. For questioning the correctness of a certificate, the following are, shortly, the methods provided. The certificate has the force of a decree, and upon service on the judgment-debtors, binds the immoveable property of the judgment-debtor within the jurisdiction of the Collector under whose authority it has issued. The person against whom it is directed may appear before the Collector and, by petition, deny his liability; and the Collector is required to hear him and to make an order, or to refer the matter to a subordinate officer for disposal. From such subordinate officer there is an appeal to the Collector; or if the Collector deals with the matter himself in the first instance, there is an appeal to the Commissioner. When the Collector has heard an appeal from a subordinate officer, there is no further appeal as of right, but the Commissioner may interfere if he thinks fit. And at any time, within a year after the service of the certificate, the judgment-debtor may bring a suit in the Civil Court to contest his liability; but, speaking generally, he can do so only on grounds already raised by him before the Revenue authorities. The grounds on which such a suit may be brought are, first, that the sum was not due; secondly, in certain cases, that there were defects in the proceedings from which substantial injury has followed; and, thirdly, that there was want of jurisdiction.

8. By subsequent Acts various kinds of demands have since been made recoverable by the certificate procedure. Section 49 of the Bengal Council Act, IX of 1880, applied that procedure to another kind of claim, purely private in its nature, namely a claim by a shareholder in an estate against his co-sharers for contribution in respect of cess paid by him in excess of his own share. And by a very recent Act I of 1891 of the same Council, certificates, which could previously be granted only by the Collector of a district, may now be issued by the Collector, or by any officer specially appointed by the Lieutenant-Governor to perform the duties of the Collector under the Public Demands Recovery Act, or by any officer in charge of a subdivision whom the Collector of the district, with the sanction of the Divisional Commissioner, may authorize to discharge these functions.

9. Mr. Beames' Bill is in the main a reproduction of the existing law, but with some important changes. It proposes to enlarge the number of kinds of claims to be recovered by

the certificate system, and the Judges would especially invite attention to one of these proposals. Section 8, clause (*b*), read in connection with section 16 of Mr. Beames' other draft Bill, proposes to empower the Collector under the settlement procedure to hear and decide claims for contribution brought by one co-sharer in an estate against another in respect of land revenue paid by the former in excess of his proper share. Claims of this character may involve difficult considerations and complicated accounts; and, whereas the Legislature has, by section 15, schedule 2, Article 41 of Act IX of 1887, refused to allow any Small Cause Court to entertain any suit of the kind, such claims might, under Mr. Beames' proposal, be decided by the Collector of a district, or by any Assistant Collector, Deputy Collector, Assistant Commissioner, or Extra Assistant Commissioner subordinate to that officer. The Judges would also invite attention to section 22, clause *b*, of Mr. Beames' Bill, in which it is proposed, with reference to sale proclamations in respect of property to be sold in execution, that "the power conferred on the High Court of making rules for the guidance of Courts in the exercise of their duties under section 287 of the Civil Procedure Code, shall, in respect of proceedings under this Act, be exercised by the Board of Revenue, all such rules being published in the *Calcutta Gazette* and having thereupon the force of law.

10. In considering the question of what classes of demands should be made recoverable by the certificate procedure, the Judges think it of primary importance to keep in view the constitutional principle, so emphatically laid down in Regulation II of 1793, that claims made by Government against individuals should be decided by independent Civil tribunals, and not by the Revenue authorities. On the other hand, there are no doubt debts due to the State, with respect to which, by reason of their number or the smallness of their amount, it would be practically impossible to proceed in the ordinary way in the Civil Courts, whilst their simplicity and the regularity with which public accounts are ordinarily kept, exclude any serious doubt as to the correctness of the claims. For such demands some summary method of recovery is no doubt necessary; and the certificate procedure is perhaps as safe, and might be made as simple, as any other form of procedure that might be suggested. But, in the opinion of the Judges, it should be strictly limited to cases of actual necessity, and cases in which it may be used with almost perfect safety. They, therefore, desire, in the first place, to recommend that its application should be limited, as it was before 1880, (*a*) to public demands in the strict sense of the term, and (*b*)) to demands which can be ascertained simply by an examination of public records under the control of the Collector; and it seems to them that by this test each of the various classes of demands, to which the certificate procedure has been applied, or to which it is proposed to make it applicable in future, should be examined and admitted or rejected, according as it does or does not comply therewith. The system should, they think, no longer be allowed to prevail in respect of rents due upon private estates under the management of the Court of Wards or otherwise in the hands of the Collector. The Judges are not aware that any reason, except the convenience of officials, has ever been suggested for subjecting the raiyats of such estates to the severity of the system, and it seems to them that the danger of injustice is very great, it being notorious that, when an estate comes under the management of the Revenue authorities, the Government officers have frequently very insufficient materials to go upon for the purpose of ascertaining the rents and other demands payable, and the sums due from the tenants. In this connection, I am directed to refer to the Bill lately introduced in the Bengal Council, to which the attention of the Government of India was invited by my letter No. 925, dated the 17th April last, a copy of which was forwarded, for the information of His Honour the Lieutenant-Governor, with my letter No. 945 of the 20th idem. By that measure it was proposed, as was pointed out by the Court, to give a large extension, and, as it seemed to the Judges, one highly objectionable in principle, to the operations of the Court of Wards and, therefore, incidentally to the application of the certificate procedure for the recovery of rents; but whether or not that Bill is being proceeded with, the Judges have no means of knowing.

11. The Judges recommend, secondly, that the Revenue authorities should not be vested with such incidental powers as those relating to insolvency, and that their functions should be limited to making their certificates and taking the necessary steps for giving effect to them.

12. Thirdly, the present procedure for questioning the validity or correctness of a certificate seems to the Judges to be extremely defective. It is complicated in the highest degree, involving as it does two series of litigation—one before the Revenue authorities, the other before the Civil Courts; and complication means expense. For that reason it is not really efficient as a means of relief from the effect of a certificate wrongly granted; while it opens, on the other hand, the possibility in every case of sale of long and costly litigation. Property sold under such conditions can never realize its full value, and the inducement to litigation afforded must affect must disastrously people already too prone to litigate. The Judges would, therefore, recommend that a much simpler system be introduced. They would allow the Collector's certificate to have, as now, the force of a decree; and they would leave the Collector, as now, to serve his own certificate, and would permit that service to have the effect which it at present has. It appears from the statistics published by the Government of Bengal that in an enormous majority of cases the service of a certificate leads to the payment of the claim made, and obviates all further action; and in such cases no change in the procedure seems to be required. But when the service of the certificate is not followed by payment of the claim, and it becomes in consequence necessary to proceed to execution, the certificate should, in the opinion of the Judges, be transmitted to the local Civil Court for execution, and the latter should be required to issue a notice of execution, and to serve it through its own officers. The judgment-debtor should then be given the

opportunity of appearing and electing one of two courses, viz, either to pay the amount of the claim, in which case matters need proceed no further; or else to deposit the amount of the claim in Court, and so to gain the right to resist execution on the ground that the sum claimed is not due If the intervention of the Civil Court be thus made before, and not after, the certificate is enforced, there would seem to the Judges to be no reason for setting aside the certificate on the ground of any irregularity: for, if any irregularity has occurred of such a kind as to place the judgment-debtor at a disadvantage, the remedy would naturally be to delay the execution for a reasonable time. Nor would the Judges allow any objection to be taken on the ground of jurisdiction. They do not see why a debtor to the Crown should be permitted to raise questions, often very difficult to solve, as to the boundaries between administrative districts; and they would, therefore, limit his right strictly to disputing his indebtedness. If this system were adopted, no subsequent suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder by reason of one or the other not being warranted by the Act.

13 The plan now suggested seems to the Judges to present many advantages over the present system. It would avoid the successive series of litigation which may arise under the existing procedure; it would secure the cases of real dispute should be decided, in the first instance, and in the promptest way, by the Civil Court, and decided at the proper stage, before the certificate has been acted upon, and not after. It would thus, the Judges believe, on the one hand afford a much more effective remedy to any person in whose case a mistake may have been made, and on the other hand obviate that depreciation in price which must result from the prospect of future litigation. Nor could the Government suffer, because what is proposed is that no person should be allowed to contest a claim on the ground of irregularity or want of jurisdiction, but only on the ground that the money demanded is not due, and that the amount claimed should be deposited in Court as a condition precedent to further action in order to dispute the claim.

14. The Judges have only one other suggestion to make at present with regard to the amendment of the Public Demands Recovery Act. Whatever system may be adopted, and, however carefully that system may be administered, there will occur cases in which properties are sold very much under their real value, and even on the assumption that in such instances nobody has been to blame except the judgment-debtor himself, who, therefore, suffers only by reason of his own negligence, still it seems a frightful penalty to impose upon a man for his neglect to pay a trifling sum, that his estate should be sold for a fraction of its value and he himself reduced to ruin. Extremely hard cases of this nature have occurred under the existing law. The Judges recommend that a provision should be introduced, analogous to that contained in the Bengal Tenancy Act with regard to sales for arrears of rent, by which a debtor, whose property has been sold, should always be at liberty to come before the Court and pay the amount of the demand or so much of it as remains unsatisfied, together with a penalty, or, if the whole of the demand has been satisfied, to pay simply the penalty and the amount of the purchase money with interest, and thereupon to have the sale set aside. This the Judges would allow him to claim as of right without any enquiry into the circumstances. It seems to them that by this provision Government could not possibly be a looser; the purchaser could sustain no serious injury; and extreme hardship would be avoided in individual cases.

15. I am next to advert to the *draft Bill to amend the Revenue Sale Law.* Under the existing law, and it would be the same under Mr. Beames' draft Bill, after the due date for the payment of the land revenue. The Collector gives notice and sells the estate. There may then be an appeal to the superior Revenue authorities on the ground of irregularity in the proceedings; and if the person whose estate is sold fails in that appeal, he may bring a regular suit in a Civil Court to set aside the sale on the ground either of want of jurisdiction or of any irregularity which has caused substantial injury, provided that such irregularity has first been made a ground of appeal to the Revenue authorities. Here again, a purchaser runs the risk of two costly series of litigation—one before the Revenue authorities, and the other in the Civil Courts. The property sold is injuriously affected, as it is seldom that at a revenue sale the price fetched reaches the value; and the other evil effects, already referred to as following this kind of incitement to litigation, occur here also. In the opinion of the Judges this system ought not to continue; and they would recommend that there be substituted for it a method of procedure analogous to that already recommended for the recovery of public demands other than land revenue, so far as the essential differences between land revenue and other public demands permit.

16. The most important point is to secure that the debtor shall really receive notice of the intended sale; and nothing, in the opinion of the Judges, could be worse than the system of serving notices from the head-quarters of a district through Collectorate peons, who, by reason of their residence at the sadar station, have no local knowledge of the estates or of the *cutcheries* at which the notices ought to be served. Serving-peons are as a class not trustworthy, and, so far as the Judges have been able to learn, it is generally believed that their illegitimate gains are large; yet it is upon their evidence that the authorities have to decide whether a sale shall stand or fall. Their ignorance of the locality makes it very difficult to decide confidently whether the service has been good or bad, and renders it especially easy for the peons themselves so to adapt their evidence as to prove it either one or the other. Under the present Act the notice must be served at the police-station and at the Munsif's Court as well as on the land. The Judges recommend that service at the *cutcherry* should also be affected by local officers possessing means of knowledge of the locality. They would have the

service effected by the peons of the Munsif's Court; they would make it the duty of the police to co-operate with the serving-peons, so far as is necessary to secure the attendance of the village chaukidar and punchayet; and they would require an endorsement of the service of notice to be signed by these persons. They would also require that, in all cases in which there is in the Collectorate a registered addrrss of the proprietor of the estate, a duplicate notice should be sent direct from the Collectorate by registered letter to such address. If a really satisfactory system of notice, such as shall make it practically certain that it shall come to the knowledge of the person affected by it, be substituted for the present very unsatisfactory practice, the Judges think that no civil suit to question the sale need be allowed.

17. There are essential differences between land revenue and other public demands. In the first place, in respect of the former, the Government is not a mere creditor, and the revenue is not a mere debt. The land revenue, although commuted into a money payment, and in these provinces for the most part into a money payment of an amount permanently fixed, really represents the share of the State in the produce of the soil; and, therefore, the Government in realizing land revenue, is not obtaining the payment of a debt, but enforcing its right to recover a share of the outturn of the land. Again, the land revenue is a matter of such essential importance to the State that no risk of any interference with its ready collection could be prudently incurred; and since it is fixed in amount, and the amount payable in respect of each estate, and all particulars connected therewith, are perfectly well known to everybody concerned, the danger of any mistake in the Collectorate as to the amount in arrear in respect of any property is extremely small. So far as the Judges have been able to observe in such suits as have been brought with a view to setting aside revenue-sales, the ground has generally been some alleged irregularity in the proceedings, and not a want of jurisdiction by reason of no arrear being due. They would, therefore, leave the Collector, subject to the control of his official superiors, to decide conclusively upon the question of the arrear due Nor would they permit a suit in a Civil Court to be brought to dispute or to set aside a sale on any other grounds. If a proprietor owes land revenue to Government, and it is duly brought to his notice that the amount is due, and if he still neglects to pay the demand and his property is sold in consequence, he ought not, in view of the Judges to be allowed to contest the sale on the ground of any defect of jurisdiction, or any irregularity in the proceedings.

18. On the other hand, the Judges recommend that, while taking away the power of bringing a civil suit, the Leg slature should give to the owner of an estate sold for arrears of land revenue, a right similar to that which now exists in the case of an estate sold for rent, and which they recommended in paragraph 15 of this letter with regard to estates sold for the recovery of public demands other than land revenue. They would allow the person whose estate has been sold to appear before the Collector within a fixed time, and to pay the amount due to Government, together with a penalty and the amount of the purchase-money with interest; and thereupon the Collector should be empowered, and it should be his duty, to set aside the sale, his order having the same effect in this respect as the decree of a Civil Court. This proposal, if adopted, could in no case entail any loss of revenue, or any delay in its realization. It would tend to secure prices at revenue-sales corresponding more nearly than now with the value of the land sold; for, instead of having to face the possibility of costly and complicated litigation on the part of the person whose land is sold, the worst that a purchaser would have to fear would be the return of his purchase-money will interest. And it would provide a remedy against the extreme hardship that occurs from time to time when properties, in consequence no doubt generally of the carelessness of the proprietors, are sold at revenue-sales for a small fraction of their value, and the owners are brought to ruin.

19. I am to add that a copy of this letter will be forwarded direct to the Government of Bengal.

No. 610T.—R., dated Darjeeling, the 6th October 1891.

From—C. E. Buckland, Esq., Offg. Secretary to the Government of Bengal, Revenue Department,

To—The Secretary to the Board of Revenue, Land Revenue Department.

With reference to the correspondence ending with the Board's letter No 89A., dated 7th February 1891, on the subject of Mr. Beames' draft Bills to amend (1) the Revenue Sale Law, and (2) the Public Demands Recovery Act, 1880, I am directed to forward a copy of a letter, No. 2321, dated 29th August 1891, from the Registrar of the Calcutta High Court, to the address of the Secretary to the Government of India, in the Revenue and Agricultural Department, and to request that the Board will be so good as to favour the Lieutenant-Governor with their opinion on the suggestions contained in that letter, after consulting the Commissioners, District Officers, and Legal Remembrancer.

2. It will facilitate the discussion of the subject if the points to which attention should be directed are now formulated. The following matters appear to require special examination, but His Honour has no desire to confine the Board's observations to them, should any others seem to call for comment :—

(1) The history of the legislation as to the Recovery of Public Demands as set out by the High Court.

(2) The High Court's opinion that the certificate procedure should be strictly limited to (*a*) cases of actual necessity, *i.e.*, to public demands in the strict sense of the term; and (*b*) cases in which it may be used with almost perfectly safety, *i.e.*, when the demands can be ascertained simply by reference to public records.

The Lieutenant-Governor desires to know whether there is any reason why this condition should not be fulfilled in the case of Wards' estates

(3) The recommendation of the High Court that the revenue authorities should not be vested with such incidental powers as those relating to insolvency, and that their functions should be limited to making their certificates and taking the necessary steps for giving effect to them.

In this connection the Lieutenant-Governor desires to be informed how many insolvency cases occur in a year, and whether there would be any difficulty in giving up the Collector's right in this respect.

(4) The High Court's proposal that when the service of the certificate is not followed by payment of the claim, and it becomes in consequence necessary to proceed to execution, the certificate should be transmitted to the local Civil Court for execution; that the latter should be required to issue a notice of execution, and to serve it through its own officers; and that the judgment-debtor should then be given the opportunity of appearing and electing one of two courses, viz., either to pay the amount of the claim, in which case matters need proceed no further; or else to deposit the amount of the claim in Court, and so to gain the right to resist execution on the ground that the sum claimed is not due. The High Court observe: "If the intervention of the Civil Court be thus made before, and not after, the certificate is enforced, there would seem to the Judges to be no reason for setting aside the certificate on the ground of any irregularity; for if any irregularity has occurred of such a kind as to place the judgment-debtor at a disadvantage, the remedy would naturally be to delay the execution for a reasonable time. Nor would the Judges allow any objection to be taken on the ground of jurisdiction. They do not see why a debtor to the Crown should be permitted to raise questions, often very difficult to solve, as to the boundaries between administrative districts; and they would, therefore, limit his right strictly to disputing his undebtedness. If this system were adopted, no subsequent suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder by reason of one or the other not being warranted by the Act."

It will be convenient if the Board will break up their remarks on this proposal into as many subdivisions as they think fit. Supposing this procedure to be an improvement, the Lieutenant-Governor would wish to know whether there is any reason why it should not be introduced in the Revenue Court, *i. e.*, without transferring the case to a Civil Court.

(5) The proposal that a debtor whose property has been sold should always be at liberty to come before the Court and pay the amount of the demand, or so much of it as remains unsatisfied, together with a penalty, and the amount of the demand has been satisfied, to pay simply the penalty, and the amount of the purchase-money, with interest, and thereupon to have the sale set aside; this claim to be allowed as of right without any enquiry into the circumstances.

The Lieutenant-Governor desires to know whether there is any reason to suppose that the price obtained by the sale of properties would be larger under this system than is at present the case.

(6) The recommendation that a method of procedure analogous to that now recommended by the High Court for the Recovery of Public Demands other than land revenue be substituted for the present system under Act XI of 1859.

(7) The recommendations—

(*a*) that service of notice of an intended sale be effected by peons of the Munsif's Court.

The Board should report whether there is any reason for supposing that the Munsif's peons know the country better than the Collector's peons do. What is the usual practice when a notice has to be served in an outlying subdivision? Is it sent to that subdivision for service, or does a peon carry it out all the way from the sadar?

(*b*) that it be made the duty of the police to co-operate with the serving peons, so far as is necessary to secure the attendance of the village chaukidar and punchayet;

(*c*) that an endorsement of the service of notice, to be signed by these persons, be required;

(*d*) that in all cases in which there is in the Collectorate a registered address of the proprietor of the estate, a duplicate notice should be sent direct from the Collectorate by registered letter to such address;

(*e*) that no civil suit to question the sale need be allowed.

(8) The proposal that the Collector should be left, subject to the control of his official superiors, to decide conclusively upon the question of the arrear due.

The Lieutenant-Governor understands that this does not mean anything new, but that the law on the point could remain unchanged.

(9) That no suit in a Civil Court should be allowed to be brought to dispute or to set aside a sale on any other grounds, such as defect of jurisdiction or irregularity in the proceedings, *i. e.*, other than the question of the arrear being due.

(10) The recommendation that the owner of an estate sold for arrears of land revenue should be allowed to appear before the Collector within a fixed time and to pay the amount due to Government, together with a penalty, and the amount of the purchase-money with interest, and that thereupon the Collector should be empowered, and it should be his duty, to set aside the sale, his order having the same effect in this respect as the decree of a Civil Court.

The Lieutenant-Governor would be glad of an opinion as to whether the effect of this proposal, like that numbered (5) above would be to increase or decrease the price bid on the sale of an estate at auction.

No. 2220—213, dated Simla, the 2nd October 1891.

From—J. W. P. Muir-Mackenzie, Esq., Under-Secretary to the Government of India, Revenue and Agricultural Department,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to the marginally noted correspondence, relating to the draft Bills prepared by Mr. Beames for the amendment of the Public Demands Recovery Act and the Revenue Sale Law in Bengal, I am desired to to say that, before considering the opinions of the Honourable Judges contained in the letter* from the Registrar of the High Court, Calcutta, a copy of which, it is understood, has been forwarded direct to the Government of Bengal, the Government of India will await the receipt of (1) the remarks of His Honour the Lieutenant-Governor on that letter, (2 a further report on the criticisms which were invited on the Bills, and (3) a reply to letter 1577 which issued from the Legislative Department on the 15th ultimo, regarding the Bill to amend the Court of Wards' Act, 1879.

From Government of Bengal to Government of India, No. 2221—848L. R., dated 26th June 1890.
From Government of India to Registrar, High Court, Calcutta, No. 911—138-3, dated 5th September 1890.
Endorsement to Bengal Government, No. 914—138-3, dated 5th September 1890.
*From Registrar, High Court, Calcutta, to Government of India, No. 2321, dated 29th August 1891.

I am to say that unless the Local Government prefers to deal with them separately, it would be convenient if these matters could all be disposed of in a single communication.

No. 664T.—R, dated Darjeeling, the 12th October 1891.

From—C E. Buckland, Esq., Offg. Secy. to the Govt. of Bengal, Revenue Dept.,

To—The Secretary to the Government of India, Revenue and Agricultural Dept.

With reference to your letter No. 2220—213 dated 2nd October 1891, on the subject of Mr. Beames' draft Bills to amend the Revenue Sale Law and the Public Demands Recovery Act, and the Bill to amend the Court of Wards' Act, 1879, I am directed to submit a copy of a letter, No. 610T. R., dated the 6th October 1891, addressed by this Government to the Board of Revenue, asking for the latter's opinion on the proposals of the High Court contained in their

letter No. 2321, dated 29th August 1891, regarding Mr. Beames' draft Bills, and to say that a further report on the criticisms invited on those Bills will be duly furnished hereafter to the Government of India.

2. I am to add that a reply to the letter No. 1577, dated 15th September 1891, from the Legislative Department of the Government of India, regarding the Bill to amend the Court of Wards' Act, has been submitted in my letter No. 605T. R., dated 5th October 1891.

No. 821A, dated Calcutta, the 12th September 1892.

From—J. A. Bourdillon, Esq., Offg Secretary to the Board of Revenue, L.P.,
To—The Secretary to the Government of Bengal, Revenue Department

D R Lyall, Esq, c.s.i.

With reference to your letter No. 610T.R., dated the 6th October last, forwarding for report a copy of a letter from the Registrar of the Calcutta High Court to the Government of India, I am directed to forward the following observations of the Board upon the criticisms and recommendations of the Hon'ble Court which, as directed, have been forwarded for report to Commissioners, District Officers, and the Legal Remembrancer.

2. I am to express regret that some delay has occurred in replying to this reference, but the subjects treated in the reports called for were of great importance and demanded careful and prolonged consideration.

3. The Board propose to refer in regular order to the points to which their attention was drawn in your letter under reply, reserving till the last their remarks on points not included among those formulated for them. They have already reported on the Bills under reference in this office No. 89A., dated 7th February 1891, and do not now propose to go beyond the High Court's letter.

4. The first point is the history of the legislation as to the recovery of public demands as set out in paragraphs 1 to 10 of the High Court's letter. Most of the officers consulted have assented without comment to the High Court's account of the past history of this question, but the Collector of Gaya and the Commissioner of Patna have pointed out that it is out of place to attach excessive importance to the preamble of Regulation II of 1793, since the principles therein enunciated were after all only general principles, and that as a matter of fact these principles were very soon departed from in Regulation XVII of the same year. The Commissioner of Burdwan, following the Collector of Hooghly, also notes that the tenor of the High Court's summary is misleading, inasmuch as no powers were conferred by the Regulations upon the Collector as landlord, which malguzars paying revenue to him did not equally enjoy with respect to their tenants. Mr. Cooke further points out that the list of the powers exercised by a Collector given in paragraph 3 of the High Court's letter is not exhaustive, since it apparently refers only to the relations between the Collector and other landlords on the one hand, and tenure-holders on the other; while as a fact, with the single exception that his holding was expressly protected from sale, the procedure for the recovery of rent from a raiyat was then far more severe than it is at present. It is further noted that, although in paragraph 6 of the High Court's letter it is said that no important change was introduced by Bengal Act I of 1875, yet by that Act demands payable by the actual cultivators were added to the list of those recoverable by the certificate procedure—a very momentous change from a revenue point of view.

5. The Board on the whole accept the review of the law as set forth by the High Court as a fair statement of the case, though, as pointed out above, it is not exhaustive, and they cannot accept the doctrine that the Legislature now is bound to adhere to the principles and practice laid down in 1793. The whole course of legislation since 1793 has been to amend and improve the laws then passed in respect to the point now under discussion, as well as on many other points.

6. The second matter for report is formulated as follows by the Lieutenant-Governor:—"The High Court's opinion that the certificate procedure should be strictly limited to (*a*) cases of actual necessity, *i.e.*, to public demands in the strict sense of the term; and (*b*) cases in which it may be used with almost

perfect safety, *i.e.*, when the demands can be ascertained simply by reference to public records"—and, in continuation of the general question, it was asked in particular whether there was any reason why the above condition should not be fulfilled in the case of Wards' estates.

7. It appears to the Board, after a careful consideration of the High Court's letter, that the paragraph in which the above representation is made is somewhat wanting in clearness of expression, and is based upon more than one misapprehension. In the first place, they find it difficult to understand exactly what is meant by "a public demand in the strict sense of the term." The demands at present recoverable by the certificate procedure are set forth in detail in section 7 of Mr. Beames' draft Bill, which, for facility of reference, is reproduced as an appendix to this letter. What, perhaps, was intended was to draw a distinction between claims made by Government on behalf of the public revenues, and those which, though made by the State, are intended to benefit individuals. If this is the correct interpretation, the Board are unable to agree. All claims which by law fall under the Act must be dealt with in the same way, and it would cause confusion in Collectors' offices if some demands had to be dealt with in one way and some in another. The other principle laid down by the High Court, viz., that only those claims should be satisfied by summary procedure which are simple, reasonably certain, and at the same time very numerous, or for very small amounts, is one which the Board cordially accept; they submit, however, that it has long been acknowledged, and has been kept steadily in view during the course of legislation on the subject.

8. The officers consulted by the Board are almost unanimous in their acceptance of the principle just enunciated, and a very large majority are of opinion that the recovery of demands due to estates managed by the Court of Wards fulfils the necessary conditions, while even among those who doubt whether the adoption of the certificate procedure for the recovery of those demands is theoretically correct, almost all admit that practical considerations render such a course of action necessary. It is strongly urged that, as a matter of fact, demands on behalf of the Court of Wards partake but slightly of the character of claims made on behalf of a private individual: the Court of Wards is managed by the Collector, the highest revenue official in the district, whose position precludes him from having any pecuniary or personal motive in the successful collection of demands; the management of a ward's estate is avowedly intended as a model for neighbouring landholders, and is carried out with the greatest care and exactitude before the public eye, while its records are open to inspection at any time by any raiyat, and are audited by a public auditor, so that, as the Commissioner of Patna observes:—"When once an estate has come fairly under the management of the Court, there can be no doubt that the conditions of paragraph 11 of the High Court's letter are fulfilled."

9. The practical considerations urged in support of the existing practice are also of great weight. An estate under the Court of Wards is not liable to sale for arrears of revenue, and as the demands due to it from tenure-holders and raiyats are often so numerous, and for so small an amount as to make a resort to the Civil Court in every case impossible, the management of the estate could not be carried on without the employment of a summary procedure. It is also the fact that the management of a Government estate, as regards the nature of the demand, is on all fours with that of an estate under the Court of Wards; yet the High Court have not objected to the employment of the certificate procedure in respect of demands due from the raiyats on a Government estate.

10. At the same time it is admitted that when an estate is first taken over by the Court of Wards, the accounts are frequently in confusion, and the demands do not satisfy the conditions of clearness and certainty laid down by the High Court. For this reason several officers recommend that additional precautions should be insisted upon, viz., that no certificate shall issue till the estate has been for two years under the Court's charge; that a survey and record of rights or a formal admission that the rent-roll is correct shall be made an antecedent condition; or, lastly, that for each estate a definite order passed by the Collector, or even a higher authority, shall be required before certificates are issued.

11. After giving the matter their best consideration, the Board are fully agreed that clearness and certainty of the demand are necessary conditions to the rightful employment of a summary proceedure, and they are of opinion that, except when the estates are freshly taken over, this condition is fulfilled in the case of wards' estates. The Lieutenant-Governor is aware that, under instructions from him, the Board have already issued a circular to the effect that the certificate procedure shall not be employed for the realization of demands due to these estates until after they have been subjected to proper survey and settlement, and that no certificate shall issue in any case where a question of right or title is involved. They are convinced that the issue of certificates for demands due to Wards' and Government estates is generally conducted with care and prudence, and they believe that the issue of the above circular has removed the only chance that existed of an abuse of the law.

12. One other passage in the High Court's letter must, however, be noticed before the Board leave this branch of the subject. At the end of his 11th paragraph the Registrar of the High Court says:—"The Judges are not aware that any reason, except the convenience of officials, has ever been suggested for subjecting the raiyats of such estates to the severity of the system, and it seems to them that the danger of injustice is very great, it being notorious that, when an estate comes under the management of the revenue authorities, the Government officers have frequently very insufficient materials to go upon for ascertaining the rents and other demands payable and the sums due from the tenants." The last charge has already been disposed of, and its substantial accuracy admitted and the remedy explained; but the Board must regard as quite unwarranted by facts the assumption that the certificate system is severe, and that it has been adopted merely for the convenience of officials. The Judges themselves admit (paragraph 13) that "in an enormous majority of cases the service of a certificate leads to the payment of the claim made and obviates all further action," and a little enquiry would have proved to the Judges that, even when further proceedings have to be taken, the satisfaction of a demand by the certificate procedure is infinitely less dilatory and costly than proceedings in a civil court. In the next place, the statement that the procedure was instituted merely for the convenience of officials levels an undeserved imputation against the revenue administration of the province, and ignores the obvious fact that this procedure was introduced for economy of management, for the benefit of the estates, and for the better despacth of business. Were the Court of Wards to be debarred from employing the certificate procedure, the management of many estates would become impossible, and they would have to be surrendered, while in order to dispose of the business of those which were retained, the number of Munsifs would have to be augmented, the expenses of the estate would be largely increased, and litigation, which the Judges are so anxious to avoid, would be greatly fostered.

13. The third point for report in your letter under reply is whether the High Court's recommendation may be adopted to the effect that incidental powers, such as those relating to insolvency, should be taken away from the revenue authorities, and that their functions should be limited to their certificates, and taking the steps necessary to give effect to them. It is also asked whether, as a fact, there are many insolvency cases in a year, and whether the abandonment of the Collector's right to deal with them would involve any inconvenience.

14. There is a general consensus of opinion, in which the Board join, that the matter is not one of any real importance. The number of insolvency cases instituted in a year is extremely small, viz., forty-seven during the last three years—thirty-one in the Presidency Division (thirty of which referred to two persons), ten in Chittagong, four in Patna, and three in Dacca; and most Collectors would look with complete indifference upon the curtailment of their powers in this respect. In this view the Legal Remembrancer and the Commissioner of the Presidency Division entirely concur: Mr. Beames further explains that the provision in clause 11, section 21 of the Bill, was not introduced for the first time, as the Judges seem to imply, for it will be found in section 19 of Act VII (B.C.) of 1880. Some officers demur to a person who has voluntarily brought himself under the Act by contract being debarred from the use of a cheap and summary procedure, and others point out that since Collectors and

District Judges are now officers of about the same standing and experience, one objection of the High Court might be met by forbidding a Collector to delegate his powers in insolvency cases. It is also observed that in Madras (I.L.R., Mad., vol. 15, p. 89) insolvency jurisdiction is exercised by Munsifs. Here in Bengal the pay of a first grade Munsif is the same as that of a fifth grade Deputy Collector, so that, if the same circumstances exist in Madras, insolvency powers are there exercised by officers who have, as regards pay, the same status as Deputy Collectors in Bengal of the sixth and lower grades.

15. The Board agree with the majority of the revenue officers consulted that the point is not one of any great importance. At the same time they consider that the figures given above show that the power has not been in any way abused, and they do not think that any good grounds have been brought forward for curtailing the powers now exercised by Collectors.

16. In the 13th and 14th paragraphs of the High Court's letter, the Hon'ble Judges suggest a complete change in the existing arrangements for the execution of certificate decrees, proposing that execution should be carried out by the civil court and not by the revenue authorities; that the judgment-debtor should then be allowed to elect between two courses, viz., to pay the claim, or to deposit the amount of the demand so as to stay execution, and gain time to file a civil suit; and lastly, that if this procedure be adopted, no subsequent suit should lie for setting aside a certificate decree on any ground except that the amount was not due. Your letter suggests that the Board should consider these proposals in such detail as they think fit, and the Board have therefore framed the following issues, which they think will enable the matter to be more easily examined:—

(*a*) Should the execution of certificates not immediately satisfied be made over to the Civil Courts?

(*b*) Should the alternative procedure suggested be allowed after notice of execution has been issued?

(*c*) If so, should the right to bring a subsequent civil suit be withdrawn except on the plea of "not indebted"?

(*d*) If the above procedure (*b*) is approved, should it be exercised in the civil or the revenue courts?

17. In regard to the first proposal, there is a remarkable unanimity among revenue officers; of the three score consulted, only four, viz., the Deputy Commissioners of Singhbhum and Manbhum and the Collectors of Midnapore and Bogra, have expressed approval of the suggestion, while, on the other hand, the most experienced officers have spoken in the strongest terms of disapproval. Thus the Commissioner of Patna writes:—"I think the proposals of the High Court are out of the question. Nearly every case would be contested. The Courts would be swamped with work, the revenue would suffer, and the Government and the judgment-debtors alike would be put to great expense." The Legal Remembrancer "altogether disapproves." The Presidency Commissioner's opinion is that "if this suggestion is adopted, the certificate procedure may as well be given up at once." And lastly, the Commissioner of Dacca, the late Mr. Worsley, wrote:—"I regard the proposed procedure as an absolutely impracticable system, such as no experienced officer who had worked the Certificate Acts both as a Collector and a Commissioner could possibly advise the Government to adopt." The Board hold the same views, and in answer to the first question give a most emphatic negative.

18. The reasons for this opinion are stated clearly and in very similar terms by almost every officer; it is pointed out that the subordinate civil courts are already much overworked, and that the working of the execution department is notoriously dilatory and expensive, so that the immediate effect of such a change of system as is recommended would be to drive the debtor from a cheap to a dear court, and substitute a dilatory for a speedy procedure; at the same time the execution of the decree would be made infinitely more difficult, because it would be carried out by a set of peons entirely beyond the control of the revenue courts, who necessarily not only take more interest in the execution of their own decrees, but are also provided with special knowledge as regards the details of the claim and the circumstances of the debtor, to which the civil courts would be entire strangers. The proposal, the Board think, is based on the fallacy that the execution of decrees is better done by the

civil than by the revenue courts. To this proposition the Board cannot assent, for they are strongly of opinion that the nazir's peons, under the immediate control of the Collector, are usually more efficient than those of the civil court under Munsifs, whose dilatoriness and want of success in the execution of decrees is proverbial, while they cannot doubt that in the execution of this special kind of decree their work would be incomparably superior.

19. As regards the second proposal opinions are less uniform. It is admitted that if the disposal of certificates not immediately satisfied were transferred to the civil courts with the alternative procedure suggested and no subsequent right of suit, a greater finality would be obtained, and the number of suits to set aside certificates would be decreased. But in the first place the number of these suits is infinitesimal, and in the second it is very clearly shown by the Collector of Birbhum and other officers that, by the adoption of this procedure, a very great hardship would be imposed on debtors by the very authority which is now attacking the severity of the certificate procedure. At present, under the Public Demands Recovery Act, a party challenging a claim has one appeal either from the Deputy Collector to the Collector, or from the Collector to the Commissioner, as the case may be, and the Commissioner can always intervene if he thinks fit, while finally recourse can be had to a civil suit. But if the proposal of the Judges is accepted, there will be first a nominal change, the names of Munsif, District Judge, and High Court being substituted for those of Deputy Collector, Collector, and Commissioner; and secondly, a very real and serious difference in the withdrawal of the right to sue except on the ground of non-indebtedness. Further, the proviso that the amount of the demand should be deposited as a condition precedent to a suit will often prove a severe hardship. It is not every judgment-debtor who is able to deposit forthwith the amount of the demand, and, so far, he would, by the proposed change in the law, be placed in a worse position than when raising an objection before the revenue authorities which involves no deposit; or than a defendant paying money into court under section 150 of the Tenancy Act, since the latter pays in only so much of the claim as he admits to be due.

20. The Commissioner of Rajshahi has also pointed out that this recommendation of the High Court seems to be based on a misconception of section 6(*b*) of Act VII (B.C.) of 1880, which allows a judgment-debtor two courses of action, viz., the payment of arrears, or the filing of an objection; the Judges appear to consider that he has only one, and they have in effect proposed "not to offer him a new means of redress, but to cut him off from one of the two already existing—the one found in practice to be always, or almost always preferred."

21. The Board are of opinion that the procedure suggested offers no advantages over that now in force, and do not recommend its adoption.

22. The answer to the third issue has already been given to some extent in the foregoing paragraphs, but the Board feel constrained to say clearly that they consider that the removal of the right to sue would be a severe measure, which is not called for by the circumstances of the case, nor likely to be mitigated by the advantages claimed by the Hon'ble Judges for their altered procedure. While confident that in the great majority of cases a claim will be satisfactorily disposed of by the revenue authorities, the Board think that it is essential that as a last resource a judgment-debtor should be able to have his claim tried by a civil court, and they consider that in this manner can effect best be given to the principles of Regulation II of 1793, so often referred to in this correspondence.

23. From the foregoing paragraphs their reply to the fourth issue may be inferred. Since they do not believe that the proposed alteration in procedure is beneficial, they do not consider that it should be adopted in the revenue courts, and they are therefore of opinion that matters should remain as they are subject to one or two small recommendations. The first is that contested cases should be referred to the civil courts, and execution stayed by the Collector upon receipt of notice from the civil court that the judgment-debtor has deposited the amount of the claim in court and intends to sue; and the second, that the Collector should be empowered to transfer any complicated or specially difficult case to the civil courts in the same way as he can already do under section 55 of the Land Registration Act VII (B.C.) of 1876. At the same

time the power of appeal to the Commissioner should be withdrawn, his powers of revision only being retained. The Board think that in this way the object of the High Court might practically be secured, without the disadvantages which are inseparable from their proposals.

24. In respect of the fifth point for report, viz., the proposal to allow a judgment-debtor to buy back his property after sale under certain conditions, there is considerable diversity of opinion, but the balance, both in numbers and experience, is distinctly in favour of the High Court's proposal, subject to certain important conditions. Practically all officers are unanimous in thinking that the proposal of the Judges as it stands would result not in an advance, as they think, but in a serious falling off in the price obtained at sales. It is pointed out that every sale would be a "bogus" transaction, and that the number of bidders and the extent of their bids would be much reduced if it were known that the sale might at any moment be set aside. Two provisions are very strongly insisted on to counteract this tendency: the first is that the period allowed for the former owner to come forward and redeem his property should be very short, and the second, that the penalty should be heavy and the interest on the purchase-money high, and that a portion of the penalty should be given to the purchaser as compensation. Some such conditions are absolutely necessary, for, as is well known, a purchaser is put to great expense in getting effect given to his purchase.

25. Subject to these safeguards, the Board are prepared to recommend that the proposal may be incorporated as part of the Bill, although they are bound to admit that officers of such ripe experience as Messrs. Allen, Beames, and Worsley are entirely opposed to it; the last named being of opinion that the concession would be grossly abused. They have also to draw attention to the fact that, as pointed out by Mr. Beames, a provision has already been made in the Bill by which the sale of property at an inadequate price for recovery of trifling sums may be avoided. He says:—

"In clause (8), section 21 of the Bill, I have made section 323 of the Civil Procedure Code applicable to executions under certificate. The effect of this section is that the Collector will not be bound to sell the property. He may raise the amount and interest by letting the property in lease or farming or mortgaging it, or managing it direct. Seeing that the Collector can under section 323 have recourse to all these methods if the Bill becomes law, the objection regarding compulsory sale for an inadequate amount falls to the ground. Properties are undoubtedly often sold for a very inadequate price under certificates, and it was because I have seen so many cases of hardship from this cause that I inserted all the sections included under clause 8 in full detail By doing so I think I have provided by anticipation against the form of hardship noted by the High Court and rendered the adoption of their suggestion unnecessary."

It is understood also that the proposal now made will refer only to estates tenures, and holdings, and not to moveable property.

26. So far the proposals to amend the Public Demands Recovery Bill have been under consideration, but in paragraph 16 of their letter, the Judges turn to the draft Bill to amend the Revenue Sale law. Before dealing with their proposals, the Board desire to call attention to a mistake of fact in this paragraph which will be dealt with again further on, but which requires to be noted here. The latter states "it is seldom that at a revenue sale the price fetched reaches the real value." The Board believe that exactly the contrary is the case, and a considerable proportion of sales are due to intentional defaults in order to obtain a higher price than the property would fetch by private sale.

27. The first recommendation which forms point 6 of those suggested by Government for discussion is stated in somewhat vague terms, and several officers have complained that they do not fully comprehend what is intended, while others have interpreted it in different ways. The Board, however, understand that the recommendation is this: just as, in the case of other public demands, the High Court deprecated the delay and expense of litigation in two kinds of courts, and recommended that the decision of appeals and objections subsequent to the demand becoming due should be transferred to the civil courts, so they propose that the same course should be adopted with reference to all proceedings after a sale in default: instead of an appeal lying to the Commissioner and the Board, subject, eventually, to the test of a civil suit, a defaulter should appeal to the civil courts, and their decision should be final, the right to file a civil suit being withdrawn except on the ground that the sum is not

due. It appears to the Board that this proposal cannot possibly be entertained, and that it is based upon wrong premises, since as above noted it is not the fact that properties sold for arrears of revenue fetch less than their fair price on account of apprehension of subsequent litigation. The officers consulted are almost unanimous in opposition, and if the Board have correctly understood the proposal, they are disposed to recommend its rejection.

28. In paragraphs 17 to 19 of their letter, the High Court communicate certain observations on the existing law and procedure for the realization of arrears of land revenue, and make certain specific recommendations for improving both. Unhappily their statement of the law on one very important part of the subject, viz., the service of notices, is entirely erroneous, and this error vitiates in great part their arguments and recommendations. They appear to understand that direct notices to the defaulter are necessary in every case of default, and that they should be served at the police-station, and the Munsif's Court, as well as on the land, whereas, as is well known to Government, such notices are only required in the few cases which fall under section 5 of Act XI of 1859 : in the great majority of cases no special notice is necessary, and the procedure is based upon the plain and common-sense ground that, when the revenue is settled in perpetuity, every proprietor must know the amount due from him, the latest date of payment, and whether he has paid or not. Under these circumstances the question of the proper service of notices, though one of the first importance in the general administration of the country, does not require special consideration so far as the sale law under Act XI of 1859 is concerned, and the recommendations of the Judges can only be considered as being of a general character. Before leaving this point, the Board desire to express in the strongest terms possible their absolute dissent from the opening words of paragraph 17 of the High Court's letter, which runs:—"The most important point is to secure that the debtor shall really receive notice of the intended sale." It has already been shown that this is not the law, and the Board would strongly oppose any proposal to alter the law in this respect. As the law stands, sale follows default as a matter of course, unless the defaulter takes action to pay up the arrear, and exemption is allowed by the Collector on his doing so. It is not for the Collector to inform the defaulter that his estate will be sold in consequence of his default, but for the defaulter to take action to avert the sale which follows the default as a matter of course, and without any further notice than the inclusion of the estate in the list hung up in the Collector's and Judge's offices.

29. Turning to the specific recommendations which have been made, and subject to the above remarks, the Board have first to report on the suggestion (*7a*) that service of notices of an intended sale should be made by a peon of the Munsif's court. This proposal is condemned, with only three dissentient voices, by the whole province, and seems to the Board quite unreasonable. It is hardly necessary to point out that what militates against the due service of notices is not want of local knowledge, but want of honesty; and, as has been already stated above, the Board are not aware that civil court peons are in this respect superior to those of the Revenue Department, while they feel no doubt that their supervision by the Collector is more personal and efficient than can be the case when a Munsif is in charge. Further, a conclusive answer, as it seems to the Board, is that under the High Court's proposal the service of notices would be carried out by an agency entirely beyond the control of the officers who issued them—an arrangement necessarily fatal to efficiency.

30. The suggestion (*7b*) that the police should be employed to assist in the service of notices is one which is deprecated by all officers, and would be strenuously resisted by the Inspector-General of Police : the members of that force are already overburdened with their legitimate duties, and could not, unless their numbers were largely augmented, undertake another which would make large demands upon their time. The proposal would also increase considerably the cost of the notice to the recipients.

31. The proposal (*7c*) to have notices signed by the chaukidar and the panchayat is a very old one, but is found in practice to be of little real value. Some few officers are in favour of it, but others urge that a peon who has been induced to report failure to serve will have no hesitation in forging the marks or signatures of any number of such witnesses, many of whom cannot write.

As a matter of practice the chaukidar usually assists, and these attestations are frequently obtained, but if they are to be made by law a condition essential to the validity of the notice, a new door will be opened for litigation and a fresh plea furnished to objectors and appellants.

32. The device (7*d*) of sending notices by registered letter has also frequently been suggested, and as often abandoned for reasons of policy, or of practical difficulty. Several officers support the suggestion, and Mr. Beames points out that it has already been embodied in section 14 of his draft Sale Bill; but the following considerations should not be lost sight of. In many districts it has been found impossible to maintain in an efficient condition any register of addresses of proprietors, and in the next place, if the notices were numerous, there is some danger of discrediting the system of registered letters and of throwing more work upon the Postal Department than it could discharge. On the whole, the Board are not prepared to support the proposal with vigour, their feeling being that it would be unobjectionable but ineffectual.

33. The Judges conclude (7*e*) by remarking that, if a really efficient system could be devised for the service of notices, no civil suit to question the sale need be allowed. The Board understand this proposal to be contingent on the acceptance of the proposal made in paragraph 16 of the Court's letter, viz., that a proprietor should have the right to redeem his estate after sale, but they see no present prospect of such a system being introduced; while even if it were, they would still oppose the withdrawal of the right to sue, which they consider absolutely essential to the correction in particular cases of the hardships which must occasionally occur in even the most perfect systems of administration.

34. With regard to the enquiry of Government whether notices of sales and other revenue notices are served through sub-divisions or by the peons of the head-quarters office, the Board find that the two systems are very equally followed. In Darbhanga and Cuttack there is a mixed procedure, and in the remaining districts about one-half of the number follows each of the two courses noted, but it is observed that the tendency is to decentralisation, and the Commissioners of the Chittagong and the Presidency Divisions have lately issued orders for more extended service through sub-divisions. The Board are not disposed to lay down a hard-and-fast rule on this subject. The circumstances of different districts vary so much that what is the best system in one district may be unsuitable in the next, and the Board are satisfied to leave this matter in the hands of Collectors and Commissioners.

35. The 8th and 9th points formulated by Government are so intimately connected that it seems convenient to consider them together. They amount to this, viz., that the Collector, subject to the control of his official superiors, should be empowered to deal conclusively with the question of the arrear due: in other words, that no suit should be allowed to set aside a sale on the ground that the sum claimed was not due. The Lieutenant-Governor observes that this proposal seems to involve no change in the law, and that also is the view taken by most officers. But the Board are disposed to think that this is not the intention of the Judges. The whole of paragraph 18 of the High Court's letter should, they think, be read together. That paragraph commences by drawing a distinction between land revenue and other public demands, and points out that besides its great importance there attaches to the former one important quality, viz., that its accounts are kept with great care, and that the demand is always certain and well known; further, that it has been noticed that suits to set aside sales usually turn on some plea of irregularity, and therefore it is proposed that the question of indebtedness shall be left entirely to the decision of the revenue authorities, and shall not be allowed as a ground of suit to set aside the sale. This is a distinct change in the law, for no such restriction is now in force. Some officers consider that the proposal is contingent upon the acceptance of that treated of as 7*e* above, viz., that no civil suit to contest the sale need be allowed, and it seems to be intimately connected with the proposal in paragraph 19 below that a defaulting zamindar should be allowed to come forward and repurchase his estate after sale. To both these proposals the Board are strongly opposed, but they would welcome a proviso that the plea of "not indebted" should be forbidden. It is beyond

question that most suits to set aside sales are chiefly based on technical grounds or small irregularities that do not affect the rights of the case, and the Board are inclined to go further than the High Court and to suggest that, though the right to sue should certainly be retained, suits should not be brought on questions of informality or petty irregularity, any more than on the question of indebtedness, but merely on the ground of substantial injustice, inadequate price at sales being specially excluded from that category.

36. The last recommendation which the Board have to consider is that made in the penultimate paragraph of the High Court's letter, viz., that concurrently with the withdrawal of the right to sue to set aside a revenue sale, the former owner should have the right to redeem the estate by payment within a certain time after the sale of the purchase-money together with interest and penalty. This recommendation has already been made in paragraph 15 of their letter in respect of estates sold for the recovery of public demands other than land revenue, and the Judges also refer to the provisions of section 174 of the Tenancy Act for the redemption on similar terms of a tenure or holding for arrears of rent.

37. The language used in the beginning of the 19th paragraph leaves something to be desired in the way of clearness, for the Judges have just recommended that the right to sue should be taken away, except on one special ground, viz , that the amount is not due, yet in the commencement of the next paragraph the withdrawal of the right seems to be absolute without any such qualification. If the recommendation now under consideration were to be seriously considered, it would be advisable to clear up this uncertainty, but the Board are so entirely opposed to the suggestion that further investigation of the Court's meaning seems unnecessary. It seems to the Board that the arguments already adduced against the proposal when made in respect of demands other than land revenue tell with still greater weight against it when extended to Land Revenue. The plea that such a procedure would tend to enhance the price obtained at sales for arrears appears to the Board to be a curious inversion of the actual facts, for it is the almost universal opinion of all consulted that in fact the result would be the exact contrary; that every sale would be understood as a sham transaction; that bids would be few and to a small amount, for no one would venture to purchase an estate with the knowledge that it might be redeemed, while on the other hand the knowledge that they held the power of redemption always in reserve would tend to make proprietors more lax and dilatory than the severe penalties of the present law allow them to be. Moreover, so far from the price obtained at a revenue sale being generally or even frequently inadequate, it is the experience of many Revenue officers that the security of the title induces purchasers to bid far higher than the real market value of the estate, and it is no uncommon device for a proprietor to default in order to dispose of his estate to the greatest advantage. Further, as between the parties to the transaction, *i e.*, the purchaser and the original proprietor, there would certainly arise disputes as to possession and the collection of rents on the one hand, and the payment of revenue and cesses on the other, and the Board think that the safety of the land revenue would be seriously jeopardised.

38. Having thus set out in detail the opinions of the Board upon the several questions forwarded to them for report, I am now desired to conclude with the following summary of their views.

39. First, as regards the recovery of Public Demands other than Land Revenue by the certificate procedure, they accept as substantially correct the High Court's account of the legislation on the subject, and they adopt as unexceptionable the principle that this procedure should be employed only in those cases where the demand is of a public character, simple, reasonably certain, and capable of easy investigation. They consider that, subject to certain safeguards, which have already been provided, demands on account of the Court of Wards satisfy these conditions. To the proposal that Collectors should cease to exercise incidental and miscellaneous powers, they have no serious objections to offer, though they do not consider any case has been made out for taking away these powers, but they demur altogether to the transfer to the Civil Courts of the duty of executing certificates issued by Revenue officers; they do not advocate the transfer of appeals to the Civil Courts, and they do

not think that it would be proper to deprive debtors of their right to bring a civil suit. The procedure suggested by the High Court of allowing debtors after sale to redeem their property by paying the amount of the debt with penalty and interest may, they think, be tried, subject to certain provisoes as to the period within which the right can be claimed and the penalty to be attached to the operation. This opinion is, however, given with some hesitation and is opposed to the views of several officers whose opinions are entitled to great weight.

40. With regard to the Revenue Sale Law, the Board are altogether opposed to substituting for the present system another wholly, or in part similar to that for the recovery of public demands other than land revenue; they object to the service of sale notices by peons of the Munsif's court—even though these notices are much fewer in number than the Court suppose—and to the employment of the police to assist in serving notices, while they are doubtful as to the propriety of sending notice by registered letters, and consider the necessity of endorsement by chaukidar and panchayat an objectionable stipulation. The proposal to make the Collector's decision final as to the amount of debt is not wholly understood, but if it involves the withdrawal of the right to sue they are opposed to it, while they altogether object to the suggestion that defaulters should be allowed to redeem their estates by payment of purchase-money with penalty and interest, as in the Tenancy Act in the case of sales for arrears of rent, and as has been now proposed in the case of public demands other than land revenue.

APPENDIX A.

7. When any arrears of the following public demands are unpaid by the person liable to pay the same, that is to say—

When any arrear of a public demand is unpaid by the person liable to pay the same.

(1). Any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue:

(2) Any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him:

(3). Any such demand, money, fee, duty, arrear, fine or costs as is mentioned in the following sections of the following Bengal Acts,—that is to say—

Act VIII of 1862, section 9;
Act IV of 1875, section 1;
Act V of 1875, section 57;
Act III of 1876, section 42, section 73, and section 85;
Act VII of 1876, section 82;
Act VIII of 1876, section 138;
Act VII of 1878, section 36;
Act IX of 1879, sections 46, 58A, 63, and 65A;
Act VI of 1880, sections 26, clause 4, and 38;
Act IX of 1880, sections 49 and 98;
Act II of 1882, section 70;
Act I of 1885, section 12;

or in the following sections and portions of the following Acts passed by the Governor-General in Council, that is to say—

Act VII of 1870, "The Court-fees Act," sections 19G, 19H, and the note to paragraph 12 of schedule I;
Act XIX of 1883, section 7;
Act XII of 1884, section 5;
Act VIII of 1885, section 114:

(4). In the case of a person to whom the collection of tolls has been farmed under the provisions of section 8 of Bengal Act V of 1864, or of the sureties of such person, any sum of money due in respect of such farm:

(5). Any arrears of revenue or rent payable to the Secretary of State for India in Council from any raiyat or from any person holding any interest in land, pasturage, forest rights, fisheries and the like, whether such interest is or is not transferable:

(6). In the case of property which under the provisions of any law for the time being in force has been taken under the charge of, or is managed by, the Court of Wards or the revenue authorities on behalf of a private individual, any arrears of rent or of other demands recoverable as rent, whether such arrears become due before or after the management devolved upon such Court or such authorities:

Provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhancement has been made by a registered agreement, or has been confirmed by a competent Court.

(7). Any sum payable to a public officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act:

(8). Any fee, duty, tax or other demand which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

The Collector may make a certificate of the unpaid demand.

The Collector may make under his hand, and in form No. 2 in the schedule annexed to the Act, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office: provided that no such certificate shall be made in respect of any such demand the recovery of which is barred by any law of limitation for the time being in force.

No. 4431L.R., dated Calcutta, the 17th December 1892.

From—C. E. Buckland, Esq., Secretary to the Govt. of Bengal, Revenue Dept.,
To—The Registrar of the High Court.

I am directed to inform you that the Lieutenant-Governor has recently had under his consideration the High Court's letter No. 2321, dated the 29th August 1891, to the address of the Government of India, a copy of which the Hon'ble Judges were good enough to forward to this Government with your letter No. 2322 of the same date, on the subject of the draft Bills prepared by Mr. Beames for the amendment of the Public Demands Recovery Act and the Revenue Sale Law. His Honour deemed it desirable to confer with the Board of Revenue, Lower Provinces, on the views of the Hon'ble Judges, and has now to address the Government of India on the whole subject of the proposed legislation on the subjects above mentioned. Before doing so, however, he would be glad to be informed whether he has altogether rightly understood the meaning of a part of the High Court's letter to the Government of India. I am accordingly desired by His Honour to request you to lay this communication before the Hon'ble Judges, and to say that Sir Charles Elliott will be much obliged if he can be favoured with a solution of the difficulty which has presented itself to him.

2. The passages of the High Court's letter to which the Lieutenant-Governor refers are contained in its 16th, 17th, and 18th paragraphs. Towards the end of paragraph 16 it is written that the Judges would recommend that there be substituted, for the existing system of the Revenue Sale Law, a method of procedure analogous to that already recommended for the recovery of public demands other than land revenue. The Board of Revenue, in their remarks on the High Court's proposals, have understood this recommendation to be that, just as in the case of other public demands, the High Court deprecated the delay and expense of litigation in two kinds of Courts, and recommended that the decision of appeals and objections, subsequent to the demand becoming due, should be transferred to the Civil Courts, so in the case of the Revenue Sale Law, the Hon'ble Judges propose that the same course should be adopted with reference to all proceedings after a sale in default, viz., that instead of an appeal lying to the Commissioner and the Board, subject eventually, to the test of a civil suit, a defaulter should appeal to the Civil Courts, and their decision should be final, the right to file a civil suit being withdrawn, except on the ground that the sum is not due.

3. The Lieutenant-Governor has, however, read the High Court's proposals differently. He finds it strongly expressed that the present system, which admits of two costly series of litigation, is injurious (paragraph 16 of the Court's letter): that the Collector should be the final authority to "decide conclusively upon the question of the arrears due;" nor would the High Court "permit a suit in a Civil Court to be brought to dispute or to set aside a sale on any other ground" (paragraph 18 of the letter). In paragraph 17 of the same letter, the Hon'ble Judges observe that the most important thing is to secure that the debtor shall really receive notice of the intended sale, and this paragraph ends with the words: "If a really satisfactory system of notice, such as shall make it practically certain that it shall come to the knowledge of the person affected by it, be substituted for the present very unsatisfactory practice, the Judges think that on civil suit to question the sale need be allowed."

4. The Lieutenant-Governor believes that the meaning of the Hon'ble Judges is that they attach great importance to informing the defaulter, not of his default, but of the date fixed for the sale, in order that he may attend and secure that a fair price is bid for the property. From this point of view His Honour agrees with the Court, and would desire that the utmost efforts should be made to secure the due service of notice—an object which section 41 of Mr. Beames' Bill is specially intended to achieve, and to strengthen which the High Court has made further suggestions. For the purpose of carrying out this suggestion, the Lieutenant-Governor would agree to persons interested in an estate being allowed to register their names and addresses, and being entitled to receive notice by registered letter of the occurrence of a default. He has not been convinced that adequate reasons have been given for substituting Civil Court peons for revenue peons, and all officers consulted demur to the employment of the police in assisting in the service of the notices, but His Honour would accept the suggestion that serving peons should be bound to obtain the countersignature of the panchayats and chaukidars. Sir Charles Elliott understands that the Hon'ble Judges of the High Court mean that (*a*) on the Collector deciding conclusively on the fact of the arrear of revenue being due, and (*b*) on adequate provision being made to ensure notice of an intended revenue sale reaching the defaulter, it shall not be open to the defaulter to appeal to the Civil Court, or to contest the sale in the Civil Court, either on the ground of non-indebtedness or on any other ground. His Honour would be glad to be informed whether he has rightly construed the Court's letter. If so, he proposes to submit to the Government of India that, if they accept the views of the Hon'ble Judges, the whole of Part VII of Mr. Beames' draft Sale Law Bill, as it now stands, may be removed from the Bill, and a single section may be substituted, providing that no Civil Court shall entertain a suit to set aside a sale, either on the plea of non-indebtedness, or of irregularity of procedure, or want of jurisdiction, or for any other cause. Looking at the careful provisions in sections 46 and 47 of Mr. Beames' draft Bill (which the Lieutenant Governor proposes to improve) for the protection of rights of defaulters against any substantial injustice, His Honour is prepared, with the assent of the Hon'ble Judges of the High Court, to recommend this course.

No. 36, dated Calcutta, the 5th January 1893.

From—H W. C. Carnduff, Esq, Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

I am directed to acknowledge receipt of your letter No. 4431L.R., dated the 17th ultimo, in which the Judges are asked to advise His Honour the Lieutenant-Governor as to the interpretation to be placed upon the recommendations made in the 16th, 17th, and 18th paragraphs of their letter No. 2321, dated 29th August 1891, to the address of the Government of India, regarding the draft Bill prepared by Mr. Beames for the amendment of the Revenue Sale Law.

2. In reply, I am to say that the Board of Revenue, whose views on the point raised are opposed to those of His Honour the Lieutenant-Governor, appear to have proceeded on the assumption that the Court's recommendations with reference to the Revenue Sale Law were meant to be identical with, and not merely analogous to, those put forward in connection with the proposed amendment of the Public Demands Recovery Act. The Judges in their letter under consideration did, as the Lieutenant-Governor supposes, intend to convey the suggestion that in cases of claims for arrears of land revenue all recourse to the Civil Courts should be barred. They did so, however, on the understanding, not only that the system of notice advocated by them (*vide* paragraph 17) would be accepted, but also (*vide* paragraph 19) that in lieu of the right of suit to contest such claims in the Civil Courts, the Legislature should give a right of redemption after sale similar to that which now exists under the Bengal Tenancy Act in the case of an estate sold for arrears of rent. The Judges observe that the latter proviso is not mentioned in the concluding paragraph of your letter, and are anxious to guard against its being in any way overlooked.

No. 58T., dated Calcutta, the 3rd April 1893.

From—C. H. Reily, Esq., Assistant Secretary to the Government of Bengal, Legislative Department,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to forward herewith draft of a Bill to amend the Public Demands Recovery Act, 1880, as prepared by me.

2. This Bill, like that of the Revenue Sale Law, was originally drafted by Mr. Beames, was revised in the Revenue Department of the Bengal Secretariat, and eventually forwarded to me for such further amendments and additions as were necessary to make it accord with the sketch of the Bill given in a letter addressed by Mr. Buckland, the Revenue Secretary, to the Secretary to the Government of India in the Revenue and Agricultural Department, which, it is proposed, should accompany the Bill when submitted for the consideration of that Government.

3. The paragraphs of that letter, which relate to the Public Demands Recovery Bill, afford authority for the insertion of three important changes in the Bill in the form in which it reached this office:—

(1) The power to set aside the certificate by a Civil Court to be limited to the ground of non-indebtedness.

(2) The Collector to have the power to refer any complicated or specially difficult case instituted for the purpose of setting aside a certificate to the Civil Court.

(3) An opportunity afforded to the judgment-debtor to redeem his property within a prescribed early date after sale on payment of a heavy penalty, and also a high rate of interest on purchase-money.

4. These additions and amendments have been given effect to in the Bill as at present drafted, and will be duly noted in their places as I proceed to discuss such sections of the Bill in detail as have been altered or amended by me.

Section 3, *Sub-section* (3)—Has been amended in form. I have added the words "written instrument" to meet the case specified in clause (*g*) of section 7.

Section 4.—The definition of "Bengal Act" in this section has been struck out. The expression only occurs once, I think, in the Bill. Therefore, the retention of the definition seems unnecessary.

Section 7.—The last paragraph attached to the proviso of this section, as printed in the revised Bill, has been incorporated in the one immediately preceding it.

Section 10.—The words "moveable and" introduced in the revised Bill, have been struck out, as they seem unnecessary. *Vide* section 11.

Section 13.—A proviso has been added to this section to empower the Collector to refer suitable cases to the Civil Court.

Section 14.—The words "introduced in the revised Bill, making the Government liable to the costs if the finding is in favour of the petitioner or the Court of Wards" have been struck out. It is intended that the Government should pay the costs of the Court of Wards? The Legal Remembrancer, until better advised, is opposed to the retention of these words. The point merits further consideration.

Section 16.—Grounds on which a Civil Court may cancel a certificate have, as the section is now drafted, been narrowed down to two, namely (1) that the amount had been paid before the certificate was made, and (2) that no part of the amount stated in the certificate was due.

Section 20.—Is new, and has been inserted with the object of enabling the judgment-debtor to redeem his property after sale on payment of a heavy penalty and a higher rate of interest on the purchase-money.

Section. 22.—The sections noted at the side of the section in the revised Bill have been incorporated. I have also added section two hundred and forty-five.

Section 24, *sub-section* (3)—Has been inserted in order to remove the provisions of section 20 from the operation of this section.

Section 32.—This section has, it seems to me, provided an efficient and effective procedure for the service of notices under the Bill. I have not therefore deemed it advisable to substitute a different mode of procedure on lines assimilated to those followed in the procedure for serving notices adopted in the Bill to amend the Revenue Sale Law.

DRAFT

OF A

Bill to amend the Public Demands Recovery Act, 1880.

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DRAFT

OF A

BILL

To amend the Public Demands Recovery Act, 1880.

WHEREAS it is expedient to amend the law for the recovery of dues and debts demandable by Public Officers; It is hereby enacted as follows:—

Bengal Act VII of 1880, section 1

Short title.

1. (1) This Act may be called the Public Demands Recovery Act, 189.

Extent.

(2) It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

(3) It shall come into force from the date on which it may be published in the "Calcutta Gazette," with the assent of the Governor-General.

Ditto, section 2.

Construction of this Act.

2. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force, for the recovery of any due, debt, or demand to which the provisions of this Act are applicable.

Ditto, section 3.

Repeal of Act in Schedule.

3. (1) Bengal Act VII of 1880 is hereby repealed; but this repeal shall not affect—

(*a*) the past operation of the Act hereby repealed, nor anything duly done or suffered thereunder;

(*b*) any liability created under the Act hereby repealed.

Certificate under Act VII of 1880 to be enforced under this Act.

(2) Every certificate made under the enactment hereby repealed may be enforced under the provisions of this Act.

(3) And where in any Act, Notification or written Instrument passed, issued or made prior to the passing of this Act reference is made to Act VII (B.C) of 1868 or Act VII (B.C.) of 1880, such reference shall, so far as it may be practicable, be taken to be made to the corresponding provisions of this Act.

Ditto, section 4.

Definition.

4. In this Act, unless there be something repugnant in the subject or context,

New

(1) "Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (*b*) without those limits, the Collector of a district, and includes, subject to the provisions of section thirty-one, any officer specially appointed by the Local Government to perform the functions of a Collector under this Act, and any officer in charge of a subdivision of a district whom the Collector of

such district, with the sanction of the Commissioner of the Division, authorizes to perform such functions as aforesaid.

(2) "Collector of the district" means the officer in charge of the revenue administration of a district:

(3) "section" means a section of this Act.

Bengal Act VII of 1880, section 5.

5. In the following cases, that is to say—

When an estate or tenure has been sold for its own arrears, and the sale-proceeds are insufficient to liquidate the same; or

(1) when, under the provisions of the Revenue Sale Act, 189 , or any law for the time being in force, an estate, share of an estate or an independent tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue, in discharge of which such sale-proceeds may under the aforesaid provisions be applied;

When arrears of revenue due from a farmer are not paid on latest date of payment;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section six of the Revenue Sale Act, 189 ;

The Collector may make a certificate.

the Collector may make under his hand, and in Form No. 1 in the schedule hereto annexed, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

Ditto section 6.

Such certificate shall have the force and effect of a Civil Court decree as regards the remedies for enforcing it.

6. (1) Subject to the provisions of this Act, every certificate made under the provisions of the last preceding section shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor.

Judgment-debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the certificate.

(2) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section ten bring a suit in the Civil Court to have the said certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section twelve, then within fifteen days after such petition has been heard and determined.

Certificate when to become absolute.

(3) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the effect of a final decree of a Civil Court.

Bengal Act VII of 1880, section 7.

When any arrear of a public demand is unpaid by the person liable to pay the same

7. When any arrears of the following public demands are unpaid by the person liable to pay the same, that is to say—

(a) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue;

(b) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him;

(c) any such demand, money, fee, duty, arrear, fine or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council:—

Act VIII of 1862, section 9.

Act IV of 1875, section 1.

Act V of 1875, section 57.

Act III of 1876, sections 42, 73 and 85

Act VII of 1876, section 82.

Act VIII of 1876, section 138.

Act VII of 1878, section 36

Act IX of 1879, sections 46, 57, 58A, 63 and 65A

Act VI of 1880, section 26, clause 4, and section 38.

Act IX of 1880, sections 49 and 98.

Act II of 1882, section 70.

Act I of 1885, section 12.

Or in the following sections of the following Acts passed by the Governor-General of India in Council:—

New.

Act XIX of 1883, section 7.

Act XII of 1884, section 5.

Act VIII of 1885, section 114;

(d) in the case of a person to whom the collection of tolls has been farmed under the provisions of section eight of Bengal Act V of 1864, or of the sureties of such person—any sum of money due in respect of such farm;

(e) any arrears of revenue or rent payable to the Secretary of State for India in Council from any raiyat or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable; together with interest thereon allowed by any law for the time being in force;

(f) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent,

whether such arrears became due before or after the management devolved upon such Court or such Authorities:

Provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhancement has been made—

by contract under the provisions of section twenty-nine of Act VIII of 1885, or

by decree of Court under the provisions of sections thirty-one, thirty-two, thirty-three or thirty-four of the said Act, or

by registered or other agreement under the provisions of sections forty-three, forty-six or one hundred and eighty of the said Act;

(*g*) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act;

(*h*) any fee, duty, tax or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

Collector may make a certificate of the unpaid demand.

the Collector may make under his hand, and in Form No. 2 in the schedule hereto annexed, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office;

Provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force;

Provided also that a certificate filed under clause (*f*) of this section shall not cease to be in force by reason of the release of the estate from the charge of the Court of Wards.

Effect of certificate.

8. (1) Subject to the provisions of this Act, every certificate made under the last preceding section shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than the case mentioned in clause (*f*) of the said section, the Secretary of State for India in Council, and in the said case specified in clause (*f*) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic, or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

Bengal Act VII of 1880, section 6 (*a*).

(2) When a certificate has been made under the provisions of section sixteen of the Revenue Sale Act, 189 , the person on whose application the certificate has been made shall be deemed to be the decree-holder, and all proceedings taken by the Collector under this Act shall be taken at the instance, at the cost, and on the responsibility of such decree-holder, and not otherwise.

New, adopted from Bengal Act IX of 1880, section 42.

Bengal Act VII of 1880, section 9.

In case of arrears of public demand payable to Officer other than Collector, such Officer may make requisition to Collector.

9. (1) When any arrear of any of the public demands specified in section seven is unpaid by any person liable to pay such public demand to a Public Officer other than a Collector, or when any such demand as is specified in clause (f) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may make to the Collector of the district, in which such person resides, or in which such demand is payable, or (if the Collector of the district shall so direct) to a Collector, a requisition in writing in Form No. 3 in the schedule hereto annexed:

Provided that no such requisition may be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

Such requisition given by a Manager to be verified and stamped as a plaint.

(2) Every such requisition given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a court-fee of the same amount as is payable under the Court-fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such requisition.

Collector may on receipt of such requisition make a certificate.

(3) On receipt of such requisition, such Collector, if satisfied that such demand is justly recoverable, may make under his hand and in form No. 2 in the schedule hereto annexed, a certificate of the amount of such arrears so remaining unpaid, together with the cost of any court-fee paid in respect of such requisition under clause (II) of this section, and shall cause the same to be filed in his office.

(4) The provisions of the last preceding section shall apply to every such certificate.

Ditto, section 10.

When certificate filed notice to be given to judgment-debtor. Upon service of notice, certificate to bind immoveable property of judgment-debtor.

10. (1) When a certificate has been filed in the office of a Collector under the provisions of section five, seven or nine, such Collector shall issue to the judgment-debtor a copy of such certificate and a notice in Form No. 4 in the schedule hereto annexed.

(2) From and after the service of such notice such certificate shall bind all immoveable property of such judgment-debtor situated within the jurisdiction of such Collector in the same manner and with like effect as if such immoveable property had been attached under the provisions of section two hundred and seventy-four of the Code of Civil Procedure.

Copy of certificate may be sent to Collector of another district to be filed in his office; and upon its being filed, it shall bind immoveable property situate in such district.

(3) A copy of such certificate may be transmitted by post under the provisions of section two hundred and twenty-three of the Code of Civil Procedure to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such certificate shall, if the aforesaid notice

has been served, bind in like manner all immoveable property of such judgment-debtor situated within the jurisdiction of such last-mentioned Collector.

Bengal Act VII of 1880, section 11.

Moveable property of person against whom certificate has been made may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

11. (*1*) If in any case other than the case specified in clause (*f*) of section seven, the Collector is satisfied that any person against whom a certificate has been filed under the provisions of section five, seven or nine is likely to conceal, or remove, or dispose of the whole or any part of his moveable property, and that the realization of the amount of such certificate will in consequence be delayed or obstructed, he may at any time after making such certificate direct an attachment of the whole or any part of the moveable property of such person.

(*2*) Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching moveable property, and subject to the provisions of section two hundred and sixty-six of the same Code.

(*3*) Such property may be sold for the purpose of satisfying such certificate, if no petition of objection is filed under the next succeeding section, or if any such petition is filed, then as soon as it has been heard and determined.

Ditto, section 12.

Any person served with notice under section 10 may file a petition of objection.

12. (*1*) If a judgment-debtor who has been served with a notice under section ten denies his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, he may at any time within thirty days after service of such notice, or, where no such notice has been duly served, within thirty days after the execution of any process for enforcing such certificate, file a petition denying his liability as aforesaid, before the Collector by whom such certificate has been made.

(*2*) Such petition shall be in, or as nearly as possible in, Form No. 5 in the schedule hereto annexed:

New.

Provided that no such petition shall be entertained unless at the same time the judgment-debtor deposits with the Collector the full amount of the sum entered in the certificate.

Bengal Act VII of 1880, section 13.

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner. Certain provisions of the Code of Civil Procedure to apply to the inquiry.

13. (*1*) The Collector shall fix a day for hearing any such petition so filed, and upon such day or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such certificate was made, and may set aside or modify or vary the certificate accordingly.

(*2*) Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers:

New

Provided that, if in the opinion of the Collector, the petition discloses a case which could be more suitably tried by a Civil Court, he may refer the petitioner thereto.

Bengal Act VII of 1880, section 14

Collector may award costs against petitioner. Costs how to be realised.

14. (1) The Collector shall have full power to direct that the costs of such petition and of the hearing thereof shall be paid by the petitioner.

(2) In any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall be added to the amount entered in the certificate, and shall be recoverable as if the same had been originally entered therein.

Ditto, section 8 (b).

Judgment-debtor may bring a suit in the Civil Court to contest the certificate.

15. (1) The person deemed to be the judgment-debtor under the provisions of section eight may at any time within one year from the date of the determination of the objection mentioned in section thirteen bring a suit in the Civil Court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled; but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under section twelve the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission.

Certificate when absolute.

(2) If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Ditto, section 8 (b).

Grounds of cancelment of certificate by Civil Court.

16. (1) No certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(a) that the amount stated in the certificate was actually paid or discharged before the making of such certificate;

(b) that no part of the amount stated in the certificate was due by the judgment-debtor under the certificate.

(2) Nothing herein contained shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

Ditto section 15

Collector may refer petition for hearing to Deputy Collector, &c.

17. (1) The Collector of a district or a Collector in charge of a subdivision may, by a general or special order, refer to any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any petition or petitions filed

under section twelve, and such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petitions accordingly.

(2) The provisions of sections thirteen and fourteen shall be applicable to any such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner to whom any such petitions have been so referred.

Bengal Act VII of 1880, section 16.

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner. Stay of execution.

18. (1) An appeal from any order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector of the district within fifteen days, and an appeal from any original order of a Collector may, subject to the provisions of this Act, be preferred to the Commissioner within thirty days after the making of such order respectively.

New.

(2) It shall be lawful for the Collector of the district, with the sanction of the Local Government, to transfer such appeals, either by general or special order, to any Collector subordinate to him for hearing.

(3) Pending the decision of such appeal, execution may be stayed is the Appellate Authority so direct, but not otherwise:

Provided that, when the Local Government shall so direct, appeals from the original orders of a Collector who is not the Collector of the district may be preferred to the Collector of the district. Such appeals shall be preferred within fifteen days after the making of such order.

(4) In each case under this section, the day on which the order was passed shall be reckoned as the first day of the period.

Bengal Act VII of 1880, section 17

Power of revision.

19. There shall be no appeal, as of right, lie from any order of a Collector passed on appeal from an order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner; but, subject to the provisions of this Act, the Commissioner and the Collector of the district, if so empowered by the Local Government, may in any case in which they think fit revise any order passed by a Collector, Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner.

New

Application may be made for annulment of sale on deposit of amount stated in certificate, auction price and penalty.

20. (1) The person deemed to be the judgment-debtor under the provisions of section eight may, at any time within thirty days after any immoveable property is sold in execution of a certificate under section twenty-one, apply to the Collector to cancel the certificate and set aside the sale on his depositing—

(a) the amount stated in the certificate, together with the interest thereon at twelve per centum calculated from the date when the certificate was filed up to the date when the deposit is made;

(b) the auction price for which the property was sold:

(c) as penalty a sum equal to fifty per centum on the auction price.

(2) If such a deposit is made within thirty days, the Collector shall pass an order cancelling the certificate and setting aside the sale.

(3) In the event of a sale being annulled by an order of the Collector under this section, the auction price for which the immoveable property was sold, together with a sum equal to one-half the penalty specified in clause (c), shall be paid to the purchaser by the Collector.

(4) An order made by the Collector under this section shall be final.

Bengal Act VII of 1880, section 18

Certificate may be enforced after one month from notice, or when petition of objection disposed of.

21. Every certificate made under the provisions of section five, seven or nine may be enforced and executed with interest at six per centum up to the date of realisation and costs upon the expiry of one month after service of the notice mentioned in section ten, or when any such petition as is mentioned in section twelve has been filed, then as soon as such petition has been heard and determined:

New.

Provided that no application for execution of a certificate shall be admissible after three years from the date on which the certificate was made, and any certificate in which no execution proceedings are pending shall be struck off on the expiry of three years from the date on which it was made.

Bengal Act VII of 1880, section 19, cl. (1).

Certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money

22. (1) Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money.

(2) The practice and procedure provided by the hereinafter specified sections of the said Code of Civil Procedure shall apply to every execution issued to enforce such certificate and realise the amount recoverable thereunder, namely—

(a) sections 223, 224, 225, 226 and 228, concerning the execution of decrees out of the jurisdiction of the Court by which they were passed;

(b) section 234, concerning execution of decree against legal representative;

(c) section 235, concerning contents of application for execution of decree;

(d) sections 245, 245A, 245B and 254, concerning the mode of decrees;

(e) sections 266, 267, 269, 271, 272, 274 and 284, concerning attachment of property;

(f) sections 278, 279, 280, 281 and 283, concerning claims to attached property;

(g) sections 286, 287, 288, 289, 290, 291, 292, 293 and 294, concerning sales in execution of decrees;

(h) sections 296, 297, 298, 299, 300, concerning sale and delivery of moveable property;

(i) sections 306, 307, 308, 309, 314, 316, 317, 318 and 319, concerning sale and delivery of immoveable property;

(j) sections 311, 312, 313, and 315, concerning applications to set aside sales;

(*k*) sections 320, 321, 322, 322B, 322C, 322D, 323, 324, 324A, 325, 325A, 325B, 325C, 326 and 327, concerning the transfer to the Collector of the execution of certain decrees and the procedure to be followed in such cases;

(*l*) sections 328, 329, 330, 331, 332, 333, 334 and 335, concerning resistance to execution;

(*m*) sections 336, 337, 337A, 338, 339, 340, 341, 342 and 343, concerning arrest and imprisonment;

(*n*) the whole of the sections contained in chapter XX, concerning insolvent judgment-debtors;

(*o*) section 588, clauses (16) and (17), concerning appeals from orders.

Powers by whom to be exercised.

23. (*1*) In enforcing and executing such certificate, all the duties, powers and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such certificate, or any copy thereof transmitted for execution under the provisions of section 223 of the said Code, has been filed. Bengal Act VII of 1880, section 19, cl (2).

(*2*) The power conferred on the High Court of making rules for the guidance of the Courts in the exercise of their duties under section 287 of the Civil Procedure Code shall, in respect of proceedings under this Act, be exercised by the Board of Revenue. New

(*3*) All such rules shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law.

(*4*) Subject to the control of the Collector of the district, and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers and authorities may be exercised by any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to such Collector. Bengal Act VII of 1880, section 19, cl. (3).

Sale of immoveable property may be set aside, if certificate is set aside by a competent Court. Proviso.

24. (*1*) If any immoveable property is sold in execution of a certificate under the provisions of section twenty-one, and if such certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immoveable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit. Ditto, section 20.

(*2*) Such order shall have the force of a decree, and application for the execution of such decree shall be made within six months after the date thereof, otherwise the party in whose favour such order was passed shall lose all benefit therefrom:

Provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

(*3*) The provisions of this section shall not apply to a sale set aside under section twenty.

engal Act VII of 1880, section 21

Register of certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

25. (*1*) Every Collector shall cause to be kept in his office a register in such form as may from time to time be prescribed by the Board of Revenue, and shall cause to be entered in such register the particulars of every certificate made under this Act, which, or a copy of which, has been filed in his office.

(*2*) Such register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Ditto Section 22 (*a*).

Payment of sum due under a certificate may be made by instalments. Payment of instalments to be entered in register.

26. (*1*) Payment of the amount due under a certificate may be made by instalments, if the Collector who made such certificate so direct.

(*2*) The payment of any instalment shall be entered in the register mentioned in the last preceding section.

Ditto Section 22 (*b*).

When total amount satisfied, Collector to enter satisfaction on certificate and in register.

27. When the total amount due under a certificate has been paid and satisfied, the Collector in whose office such certificate was originally filed shall enter satisfaction upon such certificate under his hand and signature; and shall cause the same to be entered in the register mentioned in section twenty-five.

Ditto Section 22 (*c*).

Collector to communicate satisfaction to other Collector in whose office copy of such certificate has been filed.

28. When a copy of such certificate has been transmitted to another Collector, or when such certificate has been made under the provisions of section nine upon requisition from a Public Officer other than a Collector, or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

Ditto Section 22 (*d*).

Sum levied by Collector to whom copy of certificate sent to be transmitted to Collector who made certificate.

29. When a sum has been levied or received by a Collector in respect of a certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such certificate was originally made.

Ditto Section 23

Certain officers to be deemed to be acting judicially in the discharge of their duties under this Act.

30. Every Collector of a district, Collector, Assistant Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner, and every such Public Officer as is mentioned in section nine shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850 passed by the Governor-General of India in Council.

Ditto Section 24

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

31. All Collectors of districts, Collectors, Assistant Collectors, Deputy Collectors, Assistant Commissioners and Extra Assistant Commissioners shall, in the performance of their

duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue; and no officer, although specially appointed to perform the functions of a Collector under this Act, shall exercise the appellate powers of a Collector under section eighteen, unless he is expressly authorized in that behalf by the said order of the Local Government, and, unless the contrary shall be expressly directed in such order, every officer so specially appointed shall exercise his functions subject to the control of the Collector of the district.

Board's Certificate Procedure Manual, section II, rule 12.

New

Provisions regarding service of notices.

32. The provisions of sections 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84 and 85 of the Code of Civil Procedure shall be applicable, so far as circumstances permit, to the service of all notices issued under this Act.

SCHEDULE.

Form No. 1.

(referred to in section 5.)

Certificate of arrears of revenue filed in the Office of the Collector of the district of (name of district).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of arrears of revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which arrears of revenue are due.

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council from the abovenamed

Dated this day of 18 A. B.,

Collector of

Form No. 2.

[*referred to in section 7 and section 9, cl.*] (3).]

Certificate of arrears of Public Demands filed in the Office of the Collector of the district of (name of district).

No. of Certificate	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made, and Public Officer [or Manager and of what estate] to whom due.

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council [or to A. B., a Ward of Court, or a Minor, or a Lunatic, by his next friend C. D.] from the abovenamed

Dated this day of 18 . *A.B.,*

Collector of

FORM No. 3.

[*referrred to in section* 9, *cl.* (1)].

REQUISITION.

To the Collector of the district of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this requisition is made	Nature of the Public Demand for which this requisition is made

The above sum of Rs. is due from the said
in respect of
Certified this day of

A B.

(*Official designation.*)

FORM No. 4.

[*referred to in section* 10.]

NOTICE.

To (*Insert name of judgment-debtor*).

You are hereby informed that a certificate for Rs. due from you on account of has been this day made by me against you under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, and that such certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. , you may within thirty days show cause why such certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. , unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immoveable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the certificate abovementioned is hereto annexed.

Dated this day of 18 . A. B.,

Collector of

FORM No. 5.

[*referred to in section* 12.]

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (name of petitioner) of (address).

SHEWETH—

That a certificate No. for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons:—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).

No. 59T., dated Calcutta, the 3rd April 1893.

From—C. H. Reilly, Esq., Assistant Secretary to the Government of Bengal, Legislative Department,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to forward herewith draft of a Bill to amend the Revenue Sale Law.

2. This Bill, as you are no doubt aware, was originally drafted by Mr. Beames, who distinguished the additions and modifications made to and in Act XI of 1859, and its amending Act (Bengal Act VII of 1868), by having the new matter printed in italics. The Bill as drafted by Mr. Beames was in turn revised and added to, I believe, in your department, the additions and revisions being underscored with black lines. In this condition it was forwarded to me with instructions to alter and still further modify its provisions in accordance with certain written instructions contained in a letter from Mr. Buckland, the Secretary to the Government of Bengal, in the Revenue Department, to the Secretary to the Government of India, in the Revenue and Agricultural Department, which, it was intended, should accompany the Bill after it has been finally drafted by me. Furthermore, I received certain questions suggested by Mr. Buckland on various provisions therein contained for the consideration of His Honour, with the answers duly recorded thereon.

3. While engaged in drafting this Bill, I was in constant communication with Mr. Buckland; and also on two separate occasions had the advantage of personal interviews with His Honour, and received at the time oral instructions as to various important sections which I have done my best to give effect to. The Bill as now drafted differs in some degree to the one foreshadowed in the letter to the Government of India alluded to, and some of its paragraphs will require alteration before it will represent the nature of the Bill as it is now drafted.

4. I now propose to go through the Bill in detail, noting specifically the important additions and alterations I have made in Mr. Beames' edition of the Bill as revised by the Secretary in the Revenue Department.

Section 3.—The definitions in this section have been arranged in alphabetical order as suggested.

Section 5.—Has been modified so as to avoid all reference to the month of the era, according to which the settlement is regulated. *Vide* remarks of His Honour on this section in reply to a question on the point addressed by Mr. Buckland.

Section 6.—The action of the Board under this section has been made subject to the sanction of the Local Government.

Section 8.—Has been considerably modified and added to with the object of giving effect to the additions made to the section by the Revenue Secretary, and also to carry out the oral instructions given me by His Honour as to the procedure to be adopted in the manner of the issue of notifications under this section.

Section 10.—Is entirely new, and relates to the manner in which notices shall be served on recorded proprietors before their estates can be sold for arrears of Government revenue. This section was drafted immediately after receiving express instructions from His Honour, and was submitted to and approved of by the Revenue Secretary as being in accord with those instructions.

Section 11.—Is as Mr. Beames drafted it, the only alteration being that the notice by registered letter, instead of referring to the default in payment of revenue having occurred, is now made to refer to the date on which the sale will commence.

Section 13.—It has been found possible to curtail the length of this section, without detracting from its force in any way by making the notification to be issued under this section assimilate in procedure to that specified in section 8.

Sections 14 *and* 15.—Are new, and have been drafted in order to give effect to the opinion of the Lieutenant-Governor, as stated in paragraph 6 of the Government letter alluded to, supplemented by such oral instructions as I received at the time when these sections were being drafted.

Section 29.—Has been left as Mr. Beames drafted it. I would call attention, however, to the fact that the section makes no provision for the manner in which the "notice" by the Collector shall be issued. It may be considered, however,

that the procedure to be adopted for the service of the notice may be left to the discretion of the Collector.

Section 43.—The provisions of this section have been discussed more than once, and the result is that, with the exception of one or two minor alterations, as for instance the transference of the attestation form to a schedule, it remains in the same shape as it appears in the revised edition of Mr. Beames' draft. I think it desirable, however, to call attention to the fact that the so-called attestation, as at present worded, is strictly speaking no attestation at all, and it seems to me ineffective and almost useless when read in connection with the provisions of section 58.

Section 46.—The words "and stamp fee payable on the certificate of title referred to in section 56" have been eliminated. These words in practically the same shape have been intruduced in both sections 46 and 45, as they appear in the revised edition of Mr. Beames' Bill. It seems unnecessary that this should be so. I have therefore struck out the words in section 46.

Sections 49 *and* 50.—The law, with respect to the setting aside of sales for arrears of Government revenue, has been considerably modified, and in one direction greatly enlarged. An application within a specified time after sale may be made to the Collector to set it aside, and if the applicant can show that material irregularity has occurred in the service of any of the notifications or notices and that substantial injury has been caused thereby, or if the Collector himself is satisfied that hardship and injustice has been caused by such sale, he is empowered to annul the sale. An appeal, as the section is now drafted, lies to the Commissionor from the order of the Collector refusing to annul the sale. The grounds for such appeal, however, are narrowed to one, which can show that hardship and injustice has been caused by such sale. The order of the Commissioner on such appeal to be final. Sections 49 and 50 have been drafted with the object of giving effect to the above epitomised directions received by me from His Honour.

Section 52.—Is entirely new, and is inserted with the object of affording a recorded proprietor an opportunity to appear before the Collector within a fixed time, and, on his depositing the amounts specified in this section, to be entitled as a matter of right to have the sale set aside. Authority for the inclusion of a section of this sort in the Bill, will be found in the Government letter already alluded to. The details have been formulated after interviews with, and on one or two points under direct instructions from His Honour. The Revenue Secretary had an opportunity of examining and approving of the rough draft of this section, before it was included as a part of this Bill.

Section 53.—Part VII in the revised Bill, headed "of the powers of Civil Courts" has, with the exception of a single section, been omitted from the Bill as at present drafted. Section 53 has been inserted under instructions from His Honour in order to give an express indication that no suit for the annulling of a sale for arrears of Government revenue, shall be entertained by a Civil Court. As a matter of precaution, the attention of the Government of India might be called in express terms to this section, and thus afford the India Legislative Department an opportunity of criticising its contents.

Section 55.—Has been modified in order to make its provisions accord with the new matter introduced into the Bill, relating to the law of appeals.

Section 59.—The proviso added to this section in the revised Bill has been struck out, but the object which brought about its insertion, has been obtained by amendments introduced into the body of the section itself. These amendments were inserted in accordance with the suggestions of the Legal Remembrancer.

Section 72.—The proviso added to this section in the revised edition has been struck out, its effect being to neutralize the provisions of the Act dealing with the subject of special registry.

Part VII of the revised Bill, as already mentioned, has been struck out with the exception of a single section, which is preserved in section 84 of the present Bill.

Section 86 —Is new. It has been introduced in order to comply with the suggestions made in a side note in page 26 of the revised Bill.

5. It only remains to add that section 13 in the revised Bill has been struck out, its retention being rendered superfluous under the new system adopted in the Bill for the service of notices and notifications.

DRAFT

OF A

Bill to amend the Revenue Sale Law.

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DRAFT

OF A

BILL

To amend the Revenue Sale Law.

WHEREAS it is expedient to consolidate and amend the laws relating to the sale of land for arrears of revenue and other demands realizable as arrears of revenue in the territories administered by the Lieutenant-Governor of Bengal: It is enacted as follows:—

Preamble.

PART I.

Preliminary.

Title, extent, and commencement.

1. (*1*) This Act may be called the Revenue Sale Act, 189 .

(*2*) It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal, except the town of Calcutta and the scheduled districts other than the Sonthal Parganas, Western Jalpaiguri, the Western Duar, the districts of Darjeeling, Hazaribagh, Lohardaga Manbhum, the Pargana of Dhalbhum, and the Kolhan in the district of Singhbhum.

(*3*) It shall come into force on such date as the Local Government with the previous sanction of the Governor-General in Council, may, by a notification in the *Calcutta Gazette*, direct.

Repeal.

2. (*1*) On the commencement of this Act the Regulations and Acts mentioned in the first schedule hereto annexed are hereby repealed to the extent specified in the third column thereof; save so far as regards the trial of any suits that shall be pending at the time of the said commencement.

(*2*) This repeal shall not revive any office authority or thing abolished by such enactments, nor affect the validity of anything done or suffered, or any right, title, liability or obligation accrued before the commencement of this Act.

(*3*) All rules prescribed, appointments made, powers conferred, and notifications published under any such enactments shall, so far as may be, be deemed to be respectively prescribed, made, conferred, and published under this Act.

(*4*) Any enactments or documents referring to any enactments hereby repealed shall be construed to refer to this Act or the corresponding portion thereof.

(*5*) The trial of any suit which shall be pending at the time of the commencement of this Act shall proceed and be completed as if this Act had not been passed.

Bengal Act VII of 1868, section 1, with additions from the Bengal Tenancy Act, VIII of 1885

Definitions.

3. In this Act unless there be something repugnant in the subject or context,—

(1) "Board" means the Board of Revenue for the Lower Provinces of Bengal

(2) "Collector" means the Collector of a district or a Deputy Commissioner of a non-regulation district, and includes any officer invested by the Local Government with the powers of a Collector under this Act·

(3) "Commissioner" means the Commissioner or an Additional Commissioner of Revenue of a division:

(4) "estate" means any land or share in land subject to the payment to Government of land revenue, and included under one entry in the general register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force; or in respect of which a separate account may, in pursuance of section twenty-five of this Act, have been opened:

(5) "incumbrance" means a charge upon, or a claim against, land arising out of a private contract:

(6) "independent tenure" means a tenure, the revenue of which is payable to Government:

(7) "jurisdiction" of a Collector means the district to which such Collector is appointed or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers:

(8) "official year" means the year commencing on the first day of April:

(9) "proprietor" means a person owning, whether in trust or for his own benefit, an estate, or a part or share of an estate, and includes any person by whom any estate or independent tenure is held directly under Government:

(10) "recorded proprietor" means any proprietor of an estate or share of an estate whose name, and the character and extent of whose interest in the estate, are registered in the general register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force:

(11) "revenue" is the sum payable annually to Government by the proprietor of an estate or independent tenure in respect thereof:

(12) "section" means a section of this Act:

(13) "tenure" includes all interest in land, whether the rent-paying or lakhiraj (other than estates as above defined); and all fisheries, which by the terms of the grants creating the same or by the custom of the country, are transferable whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been especially reserved by stipulation in any instrument.

Bengal Act VII of 1868, section 10

Collectorate to include all estate borne on its roll

4. Every estate hall for the purposes of this Act be deemed to be within the Collectorate of the Collector upon whose general register the revenue thereof may be borne,

although the whole or any portion of the land comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situated, although the estate of which they form a part may, under this section, be deemed to be within the Collectorate of any other Collector.

PART II.

Proceeding before Sale.

India Act XI of 1859, section 2, altered in some respects.

Arrear of revenue defined.

5. If the whole or a portion of an instalment of revenue due under the settlement be unpaid on the latest day fixed for the payment of the same, as shall be determined by the Board with the sanction of the Local Government, the sum so remaining unpaid shall be considered an arrear of revenue.

Ditto, section 3.

Latest day of payment.

6. (*1*) The Board, with the sanction of the Local Government, shall determine upon what dates all arrears of revenue, and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction; in default of which payment, the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

(*2*) The Board shall give notice of the dates so fixed in the *Calcutta Gazette*, and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the Collector, in the Courts of the Judge, Magistrate and Munsifs, and at every police station of that district.

(*3*) The dates so fixed shall not be changed except by the Board, with such sanction as aforesaid, by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

Bengal Act VII of 1888, section 11, as amended by Act II of 1871, slightly altered.

Power to sell independent tenures.

7. Whenever any revenue payable to Government in respect of any independent tenure shall be in arrear after the latest day of payment determined by the last preceding section, the Collector to whom such revenue is payable may cause such tenure to be sold in the manner and subject to the provisions hereinafter contained, for the sale of estates, for the recovery of arrears of revenue.

India Act XI of 1859, section 5. (Procedure in respect of issue of notifications, *new*.)

Notification to be made in the case of certain descriptions of arrears.

8. (*1*) No estates and no share or interest in any estate, and no independent tenure, shall be sold for the recovery of arrears accruing while—

(*a*) under attachment by order of any judicial authority, notice whereof has been received by the Collector from the

judicial authority, or by the production of an authenticated copy of the order of attachment by the proprietor or judgment-debtor, or any person appointed in his behalf ; or

(*b*) managed by the Collector in accordance with an order made by any judicial authority ;

otherwise than after a notification in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been been affixed for a period of not less than fifteen clear days preceding the date fixed for payment under section six, in the office of the Collector, in the Courts of the Judge and Munsif, and at the police station, within whose jurisdiction the estates or share of an estate, or the tenure to which the notification relates, is situated ; or if the estate or share of an estate or the tenure be situated within the jurisdiction of more than one Munsif's Court or police station, in some one or more of such courts or stations ; and also at the cutcherry of the proprietor of the estate or share of an estate, or the tenure, or at some conspicuous place upon the estate or share of an estate, or the tenure.

(*2*) If the proprietor has no cutcherry, or if the serving officer charged with the duty of affixing the notification is unable to discover the land which comprises the estate or share of an estate, or the tenure, he shall affix the same at some conspicuous place of the village within which the estate or share of an estate, or the tenure, is situated.

(*3*) The officer in charge of any court, office or police-station in which such notification is affixed, shall forward to the Collector a declaration in writing to be signed by such officer, that the notification was duly affixed.

(*4*) The serving officer charged with the duty of affixing the notification—

(*a*) at the cutcherry or at some conspicuous place in the estate or share of an estate, or the tenure, of the proprietor ; or

(*b*) at some conspicuous place in the village within which the estate or share of an estate, or the tenure, is situated,

shall affix a copy of such notification, and shall return the original notification duly endorsed to the Collector in the manner provided for the service of a notice, and the return of such service as provided in clauses (4), (5) and (6) of section ten.

India Act XI of 1859, section 6, modified by Bengal Act VII of 1868, section 3.

Notifications of sale to be issued.

9. (*1*) The Collector shall, as soon as possible after the latest day of payment determined by section six, issue notifications in the language of the district, to be affixed in his own office, and in the Court of the Judge of the district, specifying the estates or shares of estates, or independent tenures, which will be sold as aforesaid and the day on which the sale of the same will commence, which day shall not be less than thirty clear days from the date of affixing the notification in the office of the Collector*.

(2) If the revenue of any estate or share of an estate, or independent tenure, to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate or of such tenure, shall be published in the *Calcutta Gazette*.

(3) Except as hereinafter provided, all estates or shares of estates, or independent tenures, so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector, and shall be sold to the highest bidder.

Collector to serve notice on recorded proprietor.

10. (1) The Collector shall, at the same time as he shall issue the notifications prescribed in the last preceding section, cause a notice to be served on the recorded proprietor of each estate or share of an estate or independent tenure, to be sold under such notification.

(2) The notice shall be in the language of the district and shall specify—

(a) the estate, or share of an an estate or the independent tenure, of such proprietor notified for sale;

(b) the date on which such sale shall commence,

and shall be served by delivering to the recorded proprietor, and if he cannot be found, to some adult member of his family, a copy thereof, signed by the Collector or by a gazetted officer authorized by the Collector in that behalf, and sealed with the seal of the Collector.

Explanation.—A servant is not a member of the family within the meaning of this section.

(3) The serving officer shall require the signature of the person to whom the copy is so delivered to an acknowledgment of service endorsed on the original notice.

(4) If such person refuses to sign the acknowledgment, then the serving officer shall affix a copy of the notice on some conspicuous part of the usual or last known place of abode of the proprietor in the presence of the chaukidar and a member of the punchayet appointed for the village wherein such place of abode is situated.

(5) If no punchayet has been appointed for the village or place where such place of abode is situated, then the serving officer shall affix such copy in the presence of a police officer of the thana within whose jurisdiction such place of abode is situated.

(6) After the notice has been served, the serving officer shall return the original notice to the Collector with an endorsement thereon signed by such officer, stating the time and manner in which the notice was served; and, in the case where service has been made by affixing the notice to some conspicuous part of the usual or last known place of abode of the proprietor, the endorsement shall also be signed by the persons present when the copy of the notice was affixed.

New.

Notices to persons registering name and address.

11. (1) Any person interested in an estate or share of an estate, or independent tenure, whether as recorded proprietor, mortgagee, judgment-creditor, or otherwise, may apply to the Collector to register his name and address

(2) Such application shall state the name and number on the Collector's rent-roll of the estate in respect of which it is made, or give a description sufficient to identify the tenure or independent tenure to which it refers, and shall be accompanied by the fees prescribed in the fourth schedule hereto annexed.

Collector to register name and address of applicant.

12. On receipt of the application and fee mentioned in the last preceding section, the Collector shall register the name and address of the applicant and shall, within one week of the date on which the notifications under section nine are issued, give him notice by registered letter of the date on which the sale of such estate or share of an estate, or independent tenure, will commence:

Provided that no sale held under this Act shall be void or voidable by reason of the person addressed not receiving such letter, if it be proved that the letter has been duly registered and posted.

India Act XI of 1859, section 7—Modified and curtailed.

Notice to raiyats.

13. Whenever an estate or share of an estate, or independent tenure is notified for sale under section nine, the Collector shall cause a notification in the language of the district to be published in the manner prescribed by section eight, forbidding the raiyats and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

New.

Collector empowered to exempt an estate from sale on receipt of certain specified amounts between the latest day and the sixth day before sale.

14. (1) If at any time between the latest day of payment determined by section six and sunset of the sixth day before the day of sale notified under section nine, any recorded proprietor or registered tenure-holder tender payment to the Collector of the following amounts:—

(a) the arrear of revenue due;

(b) the interest at six per centum per annum on the arrear of revenue due;

(c) all outstanding charges payable to the Collector in respect of the estate or share of an estate, or the independent tenure, under any Act for the time being in force;

(d) an additional sum equal to one-fourth of the arrear of revenue due.

(2) The Collector shall accept such payment, and shall thereupon exempt the estate or share of an estate, or the independent tenure, from sale, but not otherwise:

Provided that if such arrear shall exceed the sum of five thousand rupees, the additional sum, specified in clause (d) of this section, shall consist of a sum of one thousand two hundred and fifty rupees, together with an amount equal to six and a quarter per centum of the arrear in excess of the sum of five thousand rupees:

Provided also that in any case in which the arrear amounts to less than four rupees, the additional sum shall consist of one rupee.

(3) If the sixth day before the day of sale be a Sunday or other close holiday, then payment may

be tendered on the first office day after such sixth day before the sale.

New

Power of Collector to exempt estate or share of an estate, &c., from sale on receipt of certain specified amounts between the last day of tender under preceding section and day of sale.

15. If at any time during the days which may intervene between the time within which the arrear of revenue may be tendered for payment under the last preceding section and sunset of the day immediately preceding the day of sale, any recorded proprietor or registered tenure-holder shall tender payment of the amounts specified in clauses (*a*), (*b*) and (*c*) of the last preceding section, and an additional sum equal to one-half of the arrear of revenue due, the Collector shall accept such payment and shall thereupon exempt the estate or share of an estate, or independent tenure, from sale, but not otherwise:

Provided that if such arrear shall exceed the sum of five thousand rupees such additional sum shall consist of a sum of two thousand and five hundred rupees, together with an amount equal of twelve and-a-half per centum of the arrears in excess of the sum of five thousand rupees:

Provided also that in any case in which the arrears of revenue is less than four rupees, the additional sum shall consist of two rupees.

PART III.

Protection and exemption from sale.

CHAPTER I.—*Deposits.*

India Act XI of 1859, section 15.

Deposit for the protection of an estate from sale.

16. (*1*) If any recorded proprietor of an estate or share of an estate, or an independent tenure, shall deposit with the Collector money or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the revenue of the entire estate or share of an estate, or the independent tenure, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate or share of an estate, or the independent tenure, the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate or share of an estate, or the independent tenure, not being paid before the sunset of the latest day of payment determined by section six, the Collector shall apply to the payment of such arrear the said money or securities or such part thereof, or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

(*2*) So long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate or share of an estate, or the independent tenure, for the protection of which the said deposit was made, shall be exempted from sale for arrears of revenue.

(*3*) All money and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court:

Withdrawal of the deposit.

Provided that it shall be competent to the person making a deposit under this section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

India Act XI of 1859, section 16.

Recovery of excess payments by certificate process.

17. (*1*) Whenever any recorded proprietor of an estate or share of an estate, or an independent tenure, shall have paid revenue, together with the amounts and additional sum specified in section fourteen or fifteen, in respect of such estate or share of an estate, or the independent tenure, in excess of the amount proportionate to his own recorded interest therein, he may, within fifteen days of such payment being made, move the Collector by written application to make a certificate as provided by the law for the time being in force for the recovery of public demands, specifying the revenue, amounts and additional sum which have been paid by such proprietor on account of the recorded share or interest of any other proprietor in the estate or share of an estate, or the independent tenure.

Ditto, section 9.

New—*Vide* also Bengal Act IX of 1880, section 49.

(*2*) Such application shall be verified by the applicant in accordance with the provisions of the Code of Civil Procedure for the verification of plaints, and shall bear a court-fee stamp of the same amount as is payable under the Court-fees Act for the time being in force, in respect of a plaint for the recovery of a sum of money equal to that stated in such application.

(*3*) The Collector may, if he thinks fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; and the same notices shall be issued, and the same proceedings taken thereon, as in the case of such certificate.

Deposits receivable from persons not proprietors.

18. (*1*) The Collector shall, at any time before sunset of the latest day of payment, determined by section six of this Act, receive as a deposit from any person not being a proprietor of an estate or share of an estate, or the independent tenure, in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate or tenure.

India Act XI of 1859, section 9.

(*2*) In case the person so depositing, whose money shall have been credited as aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share of an estate, or the independent tenure, from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said person to be put into temporary possession of the said estate or share of an estate, or the independent tenure, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

(*3*) In case the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

(*4*) If the person so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share of an estate, or the independent tenure, or part thereof, the amount so credited shall be added to the amount of the original lien.

India Act XI of 1859, section 8.

Claims against Government held by a defaulter not to invalidate a sale.

19. (*1*) No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act.

(*2*) Nor shall the plea that money belonging to the defaulter and sufficient to pay the arrear of revenue due was in the Collector's hands, bar or render void or voidable a sale under this Act; unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter or after the written agreement mentioned in section sixteen, the Collector shall have neglected or refused on insufficient grounds to transfer it in payment of the arrear of revenue due.

Chapter II.

Separate Accounts.

Ditto section 10.

Separation of shares held in common by the opening of a separate account.

20. (*1*) When a recorded proprietor of a joint estate or independent tenure held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

(*2*) The application must contain a specification of the share held in the estate or independent tenure by the applicant.

Ditto, section 11

Separation of shares consisting of specific portions of land by the opening of a separate account.

21. (*1*) When a recorded proprietor of a joint estate or independent tenure, whose share consists of a specific portion of the land of the estate or independent tenure, desires to pay his share of the revenue separately, he may submit to the Collector a written application to that effect.

(*2*) The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account of it.

Bengal Act VII of 1876, section 70.

Separation of shares consisting of interest in specific portion of estate by opening separate accounts.

22. (*1*) When a recorded proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification in such form as may be prescribed by the Local Government, of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account thereof.

Procedure in opening separate accounts.

23. (1) On the receipt of an application under sections twenty, twenty-one and twenty-two the Collector shall cause a copy thereof to be published in the manner prescribed by section eight.

India Act XI of 1859, part of sections 10 and 11, and Bengal Act VII of 1876, portion of section 70.

(2) In the event of no objection being urged by any recorded proprietor within six weeks from the date of publication of the application, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

Date of commencement of separate liability.

24. The date on which the Collector records his sanction to the opening of a separate account under the last preceding section shall be held to be that from which the separate liabilities of the share of the applicant commence.

India Act XI of 1859, part of sections 10 and 11, and Bengal Act VII of 1876, part of section 70.

No separate account to be opened for incorrect share or for share bearing revenue of less than one rupee.

25. No separate account shall be opened under section twenty-three in respect of the share of any applicant otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor; nor shall any separate account be opened in respect of any share, the revenue of which is less than one rupee, or if the revenue of any residuary share which would be formed by the grant of such an application, would be less than one rupee.

Bengal Act VII of 1876, section 69, modified

New.

If objection be made, parties to be referred to the Civil Court.

26. If on the publication of the applications referred to in section twenty-three, any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object—

India Act XI of 1859, section 12, and Bengal Act VI of 1876, section 74.

(a) that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him; or

(b) (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of an estate) that the amount of revenue stated by the applicant to have been heretofore paid on account of such portion of land or on account of the applicant's undivided interest therein is not the amount which has been recognized by the other sharers as the revenue thereof,

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

Bengal Act VII of 1876, section 72.

Application to close a separate account.

27. Whenever any share, in respect of which a separate account has been opened by the Collector under section twenty-three, shall no longer correspond with the character and extent of interest held in the estate by any proprietor, or jointly by two or more proprietors, any recorded proprietor of any interest in the estate for a share of which such separate account is open, may submit to the Collector a written application setting forth the circumstances under which such share no longer corresponds with the character and extent of interest held as aforesaid, and specifying the manner in which such share has been broken up and distributed among the proprietors of the estate, or the manner in which the said character and extent of interest have been changed, and praying that the separate account standing open in respect of such share may be closed; and if he so desire, that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been opened under section 25 for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors C, D and E.

In course of time X has inherited A's 4 annas share, and also C's interest in the 7 annas share which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows :—

X	...	...	...	...	9 annas.
B	...	...	...	...	3 "
D and E	..	..	.		4 "

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share, and also the separate account which is open in respect of B's 5 annas share, as neither of those shares corresponds with the extent of interest held by any one proprietor or held jointly by two or more proprietors in the estate.

X may, in the same application, also apply for the opening of a separate account in respect of the 9 annas share which he now holds. Any of the other proprietors may also make a similar application.

Ditto, section 73 and part of section 74.

Separate account may be closed and another opened.

28. (*1*) On receipt of the application mentioned in the last preceding section, the Collector shall cause a copy of the same to be published in the manner prescribed by section eight and, if within six weeks of the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as desired by him under sections twenty, twenty-one and twenty-two, as the case may be.

(*2*) If any recorded proprietor object that the share in respect of which any separate account is open as aforesaid has not been broken up and does still correspond with the character and extent of interest held by any proprietor or proprietors, the Collector shall proceed as determined by section twenty-six.

New, based on section 28 of Bengal Act VII of 1876

Collector may close an incorrect separate account *suo motu*.

29. (*1*) Whenever it shall come to the notice of the Collector that a share for which a separate account has been opened under section twenty-three, does not correspond with the character and extent of interest held in the

estate by the proprietor with whom the separate account was opened, the Collector shall issue a notice to the said proprietor informing him of his intention to close the separate account, and requiring him to state in a written application any objection he may have thereto.

(2) If within six weeks from the service of the notice, the proprietor shall not make such application, or if the objections made by him are not in the opinion of the Collector good and sufficient, the Collector shall record a proceeding stating his reasons for believing the separate account to be incorrect, and shall order that the separate account be closed, and it shall be closed accordingly.

Sale of separate shares.

30. (1) Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector shall, in the first place, put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. India Act XI of 1859, section 13.

(2) In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale notified under section nine.

(3) The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of revenue assigned thereto.

Entire estate may be sold under certain conditions.

31. (1) If in any case of a sale held according to the provisions of the last preceding section there be no bid, or if the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. Ditto, section 14.

(2) If such purchase be completed, the Collector shall give such certificate and delivery of possession as are mentioned in sections fifty-six and fifty-seven to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

(3) If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is notified by section ten of this Act.

Chapter III.—Estates under Court of Wards.

Estate under Court of Wards exempted from sale.

32. Except as hereinafter provided by section thirty-eight, every estate, and subject to the provisions of section thirty, every share or part of an estate for which a separate Bengal Act IX of 1879, section 23, as amended by Act III of 1881, section 4, clause (1).

account has been opened under section twenty-three, shall be exempt from sale for arrears of revenue which have accrued whilst such estate, share or part has been under the charge of the Court of Wards in accordance with the provisions of Bengal Act IX of 1879 :

Provided that all such arrears of revenue shall be a first charge upon the sale proceeds of any estate, share or part which may be sold for any other cause than such arrears of revenue.

Bengal Act IX of 1879, section 23, as amended by Act III of 1881, section 4, clause (2).

Recovery of arrears of revenue due when estate ceases to be under charge of Court of Wards.

33. If at the time when such estate, share or part ceases to be under the charge of the Court of Wards an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses, and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit :

Provided that when such estate, share or part has been attached under this section, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment, and shall pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

Bengal Act IX of 1879, section 24

Estate belonging to minors not to be sold for arrears of revenue.

34. No estate, the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

Ditto Ditto.

Collector may attach estate.

35. The Collector may on an arrear accruing on any estate mentioned in the last preceding section, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager, or by farming it as he may think fit for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

Ditto section 25.

When exemption from sale applies.

36. The exemption from sale for arrears of revenue referred to in section thirty-four shall only apply to cases in which a written notice of the fact that the estate

is the sole property of one or more minors and entitled to such exemption has been served on the Collector before the sale.

Application of proceeds of farmed estate.

37. (1) When an estate has been farmed under section thirty-five, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the proprietor or to his duly constituted agent, or shall dispose of them in any of the modes mentioned in section forty-nine or section fifty of Bengal Act IX of 1879.

Bengal Act IX of 1879, section 26, adding the last sentence of the proviso to section 4, of Act III of 1881.

(2) Whenever such estate shall be released from attachment, the Collector shall furnish such proprietor or his duly constituted agent with an account of the receipts and expenditure extending over the time when such estate was under attachment.

Conditions under which estate may be sold for arrears accrued under Court.

38. Notwithstanding anything in the clause 5, section 8, Regulation I of 1793, or in sections thirty-two and thirty-three contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court of Wards, may at any time be sold under the provisions of this Act, if the Court of Wards has certified in writing that the interests of the ward require that such estate, share or part of an estate be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

Section 23 (a) added to Bengal Act IX of 1879 by Act III of 1881, section 4.

Chapter IV.

Attached Estates.

Estates under revenue attachment exempted from sale.

39. No estate, or share or part of an estate, held under attachment by the revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

India Act XI of 1859, section 17, penultimate sentence.

Explanation.—The attachment of of an estate, or share or part of an estate, under the provisions of section ten of the Public Demands Recovery Act, 1880, is not an attachment within the meaning of this section, and does not exempt the estate, or share or part of an estate, so attached from sale for arrears of revenue.

New.

Estates under judicial attachment exempted from sale till close of the year.

40. No estate, or share or part of an estate held under attachment or managed by a revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

India Act XI of 1859, section 17, last sentence.

PART IV.

Sales.

Sales where to be held.

41. Sales shall ordinarily be held by the Collector in the Collector's office at the sadar station of the district:

Ditto, section 19.

Provided that it shall be competent to the Board to prescribe a place for holding sales other than such office whenever they shall consider it beneficial to the parties concerned.

India Act XI of 1859, section 20.

Adjournment of sales.

42. In case the Collector shall be unable from sickness, from the occurence of a holiday or from any other cause to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner and announcing the adjournment by a written notification stuck up in his cutcherry, and so on, from day to day, until he shall be able to commence upon or to complete the sale; but, with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

New.

Procedure at sales.

43. (2) On or before the day of sale notified under section nine, the notifications affixed in the Collector's office under that section, together with the return of publication of notice in the Judge's Court, and the returns of service of all and any notices issued and declarations forwarded under any of the provisions of this Act, shall be laid before the Collector, who shall satisfy himself that all notifications and notices previous to sale by this Act required have been duly issued for the period at the places and in the manner by this Act prescribed.

(2) On being so satisfied, the Collector shall record an attestation in the form prescribed in the second schedule hereto annexed, that all the requirements of this Act in respect of the publication of notifications and notices purport to have been complied with, and such attestation shall be kept with, and form part of, the record of sale proceedings.

(3) If the Collector be not satisfied that the prescribed notifications and notices have been duly issued and served in respect to any estate notified for sale under section nine, he shall postpone the sale and issue fresh notifications and notices for the period at the places and in the manner by this Act prescribed.

India Act XI of 1859, section 21.

Order of selling.

44. Upon completion of the attestation mentioned in the last preceding section, the sales shall proceed in regular order; the estate or share of an estate, or independent tenure, to be sold bearing the lowest number on the revenue-roll of the Collector's office of the district being put up first, and so on, in regular sequence: and it shall not be lawful for the Collector to put up any estate or share of an estate, or independent tenure, out of its regular order by number, except where it may be necessary to do so on default of deposit, as mentioned in the next succeeding section.

Ditto, section 22.

Deposit on account of purchase-money.

45. The person who shall be declared the purchaser of an estate or share of an estate, or independent tenure, at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of

the estate or share of an estate, or independent tenure, as the Collector may think necessary, either in cash, currency notes or Government securities to be valued at the market rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share of an estate shall forthwith be put up again and sold.

India Act XI of 1859, section 23.

Full payment of purchase-money

46. (1) The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate, or independent tenure, bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth.

(2) On default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share of an estate, or independent tenure, shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share of an estate, or independent tenure, or to any part of the sum for which it may subsequently be sold.

(3) In the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the Collector shall proceed to levy the difference from him under the provisions of the Public Demands Recovery Act, 1880, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner prescribed under section fifty-nine, for the disposal thereof.

Ditto, section 24.

Re-sale.

47. (1) When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner notified under section ten, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred.

(2) If the payment, or tender of payment, of the arrear on account of which the estate or share of an estate, or independent tenure, was first sold, and of any arrear which may have subsequently become due, and of the amounts and the additional sum specified in section fifteen, shall be made by or on behalf of the proprietor of the estate or share of an estate, or independent tenure, before sunset of the third day, the issue of the notification of re-sale shall be stayed.

Ditto, ditto.

Method of calculating amount to be recovered from bidders when default has occured more than once.

48. (1) If default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized:

(2) The rules contained in sections forty-five and forty-six shall be applicable to every such re-sale.

New

49. Any person interested in any estate or share of an estate, or an independent tenure, sold for arrears of revenue or injuriously affected by such sale may, within thirty days of the date of the sale, apply to the Collector to annul the sale; and if it appear to the Collector that material irregularity has occurred in the service of any of the notifications or notices referred to in section forty-three, and that substantial injury has been caused thereby, or if the Collector is satisfied that hardship or injustice has been caused by such sale, he shall annul the sale or issue such order authorized by law as the justice of the case may require.

Application to Collector against sales.

New

50. (1) If the Collector by an order issued under the last preceding section refuse to annul the sale, the applicant may within thirty days from the date of such order appeal to the Commissioner.

Appeal to Commissioner against sales.

(2) The Commissioner shall hear such appeal, and if he be satisfied that hardship or injustice has been caused by such sale, he may annul the same.

(3) The decision of the Commissioner upon any appeal made under this section shall be final.

India Act XI of 1859, section 25.

51. Whenever an order is issued to annul the sale under section forty-nine, or fifty, the officer by whom such order is made shall, at the same time award to the purchaser a payment from the proprietor of compensation for his loss if the sale shall have been occasioned owing to the neglect of the proprietor, such compensation not to exceed a sum equal to ten per centum of the amount of purchase-money.

Award to purchaser compensation.

New

52. (1) Notwithstanding anything hereinbefore contained, the recorded proprietor of an estate or share of an estate, or an independent tenure, sold for arrears of revenue, may—

Recorded proprietor empowered to redeem estate, &c., under certain specified conditions.

(a) if no application is made to the Collector to annul the sale under section forty-nine within forty-five days of the day of sale; or

(b) if such application be made and no appeal be preferred to the Commissioner against the order of the Collector under section fifty within forty-five days of the date of such order; or

(c) if an appeal be preferred to the Commissioner under section fifty within fourteen days from the date of the order dismissing the appeal,

apply to the Collector to annul the sale on his depositing in the office of the Collector—

(d) the arrears of revenue on account of which the estate, share of an estate, or the independent tenure, was first sold, and of any arrears which may have become subsequently due, together with the interest thereon, calculated at six per centum from the date when such arrears fell due up to the date when the deposit under this section is made;

(e) a sum equal to ten per centum of the purchase-money;

(f) a sum equal to one-half of the arrears of revenue due.

(2) If such deposit is made within thirty days of the date of the application, the Collector shall make an order annulling the sale.

Provided that if the arrears of revenue shall exceed the sum of five thousand rupees, the sums specified in clause (f) of this section shall consist of a sum of two thousand and five hundred rupees, together with an amount calculated at the rate of twelve and-a-half per centum on the arrears in excess of the sum of rupees five thousand.

(3) If the recorded proprietor fail to make the deposit within the period hereinbefore prescribed, the Collector shall forthwith make an order dismissing the application, and the sale in respect of which such application was made shall become final and conclusive at noon of the day on which such order was made, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(4) The order of the Collector upon an application made under this section shall be final.

New.

Civil Court debarred from entertaining suit for annulling sale for arrears of revenue.

53. From and after the date on which this Act shall come into force no Civil Court shall entertain a suit for annulling the sale of an estate, share of an estate, or an independent tenure, sold for arrears of revenue.

India Act XI of 1859, section 32.

Notification of annulment of sale.

54. The annullment by a Collector or a Commissioner of a sale made under this Act shall be publicly notified by the Collector in the same manner as the becoming final and conclusive of sales is required to be notified by section fifty-six, and the amount of purchase-money shall be forthwith returned to the purchaser with a sum equal to ten per centum thereof, which shall be paid by the Government, unless the proprietor shall have become liable for or have deposited the same under the provisions of section fifty-one or fifty-two.

Ditto, section 27—modified.

Sales when final.

55. (1) Subject to any application made to annul a sale under section fifty-two, all sales of which the purchase-money has been paid up under section forty-six, and in respect of which no application to annul the same has been made within the period for such applications under section forty-nine, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(2) Sales in respect of which an application to annul the same has been made under section forty-nine and no appeal has been preferred to the Commissioner against the order of the Collector under section fifty shall, subject as aforesaid, be final and conclusive at noon on the thirty-first day from the date of the order if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

(3) Sales against which an appeal may have been preferred and dismissed by the Commissioner shall, subject as aforesaid, be final and conclusive at noon on the fifteenth day from the date

of the order dismissing the appeal, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

Illustration.—If the sale takes place on the 15th of April, it will, unless affected by the conditions prescribed under this section, become final and conclusive at noon of the 13th of June.

India Act XI of 1859, section 28.

Certificate of sales.

56. (1) Immediately upon a sale becoming final and conclusive, the purchaser shall be entitled on application to the Collector and on payment of the stamp duty required by law, or on proof that it has been paid, to receive a certificate of title in the form prescribed in the third schedule hereto annexed, and the certificate after registration under Act III of 1877, or any other law for the time being in force for the registration of documents, shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate, or independent tenure sold, being vested in the person or persons named from the date specified therein.

(2) On such certificate being granted, the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Munsifs and police-stations within whose jurisdictions any part of the estate or share of the estate, or independent tenure, sold shall be situated.

Ditto section 29

Delivery of possession.

57. (1) When a certificate of title has been granted under the last preceding section, the Collector shall order delivery of possession of the estate or share of an estate, or independent tenure, purchased, to be made by proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the ownership of the estate has been transferred from the former proprietor or proprietors to the purchaser, and by affixing a copy of the certificate at the *mal* cutcherry or in some conspicuous place on the estate or share of an estate, or the independent tenure, purchased; and, if need be, by removing any person who refuses to vacate the same.

(2) It shall not be necessary for the Collector to order delivery of possession to be made in any other way than is provided in this section.

Bengal Act VII of 1868, section 8—modified and enlarged.

Certificate to be conclusive evidence of regularity in procedure.

58. (1) With every certificate of title which may be given to any purchaser under section fifty-six, there shall also be delivered to him free of cost a certified copy of the attestation made under section forty-three, and such certificate and attestation shall be conclusive evidence in favour of such purchaser and of every person claiming under him, that all notifications and notices in or by this Act, required to be served or posted, have been duly served and posted, for the period, at the places and in the manner by this Act required, and that the sale to which they refer was a sale under this Act.

(2) The title of any person who may have obtained any such certificate and attestation shall not be impeached or affected by reason of any omission, informality or irregularity as regards the serving or posting of any notification or notice

in the proceedings of the sale at which such person may have purchased.

Disposal of purchase-money.

59. (1) The Collector shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate, or independent tenure, sold, and, secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate, or the independent tenure, in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate, or the independent tenure, sold, or their heirs or representatives to be immediately payable to his or their receipt in the manner following, to wit, in shares proportioned to their recorded interest in the estate or share of an estate, or the independent tenure, sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

India Act XI of 1859, section 31—slightly altered.

(2) If before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor or proprietors except under precept of a Civil Court:

Provided that the residue, if any, of the purchase-money of an independent tenure shall be held in deposit on account of the late holder of the tenure, and not on account of the proprietor or proprietors of the estate.

Bengal Act VII of 1868, section 11.

Procedure on application by other than late proprietor.

60. When any application for payment of the residue of the purchase-money of an estate, share of an estate, or the independent tenure, shall be made to the Collector under the last preceding section by any person other than the late recorded proprietor or proprietors, the Collector may, if he shall think fit, cause a notification to be published in the manner prescribed by section eight, requiring all persons who object to the payment of the said residue to the applicant to appear before the Collector on a day to be specified in such notification, not being less than thirty days from the date of publication thereof, and to present a written statement of their objections, and on the day specified he shall refer the parties to the Civil Court:

New.

Provided that no person who shall fail to present his objection to the Collector as prescribed in this section shall be entitled at any future time to claim payment of the said residue from the Collector.

Punishment for contempt.

61. Any Collector conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector, shall carry his sentence into effect:

India Act XI of 1859, section 56.

Provided that an appeal from any order passed under this section shall lie to the Commissioner whose decision shall be final.

India Act XI of 1859, section 57

Default in making deposit to be considered a contempt.

62. A default to make good a bid by making the deposit required by section forty-five of this Act shall be held to be a contempt.

Ditto, section 58

Power of Government to purchase at a sale.

63. (1) When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon,

(*a*) If there be no bid, the Collector shall purchase the estate on account of Government for a sum not exceeding one rupee; or

(*b*) if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector may take or purchase the estate on account of the Government at the highest amount bid.

(2) Whenever the Collector shall purchase an estate under clause (*a*) or (*b*) of this section, he shall be entitled to realize, under the Public Demands Recovery Act, 1880, any arrears of revenue or other demands still due from the defaulting proprietor and not covered by the sum paid for the estate or share of an estate, or the independent tenure, and in all cases the Government shall acquire the property subject to the provisions of this Act.

PART V.

Rights and Liabilities of Purchasers.

India Act XI of 1859, section 30, modified and added to.

Liability and rights of purchaser.

64. The person who shall under section forty-three or in the event of a resale under section forty-five be declared the purchaser of an estate or share of an estate, or an independent tenure, shall be answerable for all instalments of revenue, and shall be entitled to collect rents from all persons liable to pay the same which may fall due after the latest day of payment of the arrears in respect of which the estate, share of an estate, or the independent tenure, was sold.

Ditto, section 37

Rights of a purchaser of a permanently settled estate sold for its own arrears.

65. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar, and Orissa, sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures and forthwith to eject all tenure-holders, with the following exceptions:

(*a*) istimrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement:

(*b*) tenures existing at the time of settlement, which have not been held at a fixed rent:

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures:

(*c*) tenures created since the time of settlement, and farms for terms of years when such tenures and farms have been duly registered under the provisions of this Act:

(*d*) leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

Rights of purchaser of independent tenure.

66. The purchaser of an independent tenure sold under the provisions of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all tenures, and forthwith to eject all tenure-holders, with the following exceptions:— Bengal Act VII of 1868, section 12.

(*a*) the classes specified in clauses (*a*), (*b*) and (*d*) of the last preceding section:

(*b*) tenures created or recognized by the settlement proceedings of any current temporary settlement as tenures bearing a rent which is fixed for the period of such settlement.

Purchaser's right of enchancement.

67. Such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enchancement of the rent of any land coming within the class of exceptions described in clause (*d*) of section sixty-five if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise: & Bengal Act VII of 1868, sections 13 and 14.

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat, having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enchance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

Rights of a purchaser of an estate not permanently-settled, sold for its own arrears.

68. The purchaser of an estate in a district not permanently-settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, except leases of lands whereon dwelling-houses, manufacturies or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purpose, and the stipulated rent paid, continue in force and effect: India Act XI of 1859, section 52.

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mauza, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

India Act XI of 1859, section 53.

Rights of a purchaser being a sharer in any estate.

69. Excepting proprietors with whom the Collector, under section twenty-three, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

India Act XI of 1859, section 54—modified.

Rights of purchasers of shares of estate.

70. When a share or shares of an estate may be sold under the provisions of section thirty or thirty-one, whether the share or shares so sold be those for which a separate account has been opened, or the remaining portion of the estate for which no separate account has been opened, the purchaser shall acquire the share or shares subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Ditto, section 55.

Recovery of arrears due to defaulters.

71. Arrears of rent which on the latest day of payment may be due to the defaulter from all persons liable to pay the same, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

PART VI

Protection of Tenures.

Ditto, section 38.

Registration of tenures.

72. The following rules for the registration of tenures and of farms for terms of years shall be observed:—

there shall be two sets of registers—one for common registry and one for special registry:

common registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government:

special registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

India Act XI of 1859, section 39.

Application for registry.

73. (1) The holder of any tenure desirous of registering it shall apply by petition to the Collector of the district to which the estate belongs.

(2) The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

(*a*) the pargana or parganas in which the tenure is situated;

(*b*) the nature of the tenure and the name and revenue roll-number of the *mahal* in which it is situated;

(*c*) the name or names of the village or villages whereof the land is composed or wherein it is situated;

(*d*) the area of the land comprised in the tenure, with its boundaries in complete detail;

(*e*) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it;

New.

(*f*) the date of the deed constituting the tenure, or, where no such deed exists, a statement of the evidence on which the applicant relies for proving that he and his predecessors in title (if any) have been in possession of the tenure for twelve years preceding the date of the application;

(*g*) the name of the proprietor who created the tenure;

(*h*) the name of the original holder of the tenure;

(*i*) the name of the present possessor, and, if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

New

(3) The deeds or other evidence referred to in clause (*f*) of this section shall be submitted with the application for the consideration of the Collector.

(4) Holders of such farms as are described in section seventy-two may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

India Act XI of 1859, section 41.

Procedure on application for common registry.

74. (1) When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the *mal* cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any person interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

(2) If within the limited time no objection is made, the Collector shall consider the deeds of other evidence produced by the applicant, and if

he shall, on summary enquiry or on consideration of such evidence as he may cause to be adduced, be satisfied of their genuineness and sufficiency, he shall register the tenure or farm.

(3) If within the limited time an objection is made by any recorded proprietor, or by any person interested, not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable grounds of objection, or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application.

(4) If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

India Act XI of 1859, section 4.

Procedure on application for special registry.

75. (1) When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.

(2) If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if satisfied [illegible] of the Assistant Collector, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

[illegible] section 15.

(3) If within the limited time an objection is made by any recorded proprietor, or by any person interested, not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable grounds of objection, or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient, the Collector shall suspend proceedings and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

(4) If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Ditto, section 43.

Registration of leases of certain lands.

76. Leases of lands of the description mentioned in clause (*d*) of section sixty-five, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of tenures.

Ditto, section 44.

Registration of old tenures.

77. (1) Tenures of the classes described in clauses (*a*) and (*b*) of section sixty-five, may be registered at the option of the holders, and when so registered shall be entered only in the special register.

(2) Application for such registry shall contain the particulars specified in section seventy-three so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section seventy-four.

(3) If within the limited time no objection is made by any recorded proprietor or by any person interested, not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy himself as to the validity of the tenure, and, if so satisfied, he shall report the case to the Commissioner, who shall act according to the provisions of section seventy-five, and the provisions of the said section shall be applicable to cases in which objections shall be made:

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of tenures of the description herein referred to.

Registration of rent-free tenures in estates under partition.

Bengal Act VIII of 1876, section 96.

78. On receiving from the Deputy Collector appointed under Bengal Act VIII of 1876 a notice in accordance with section ninety-six of that Act, to the effect that a rent-free tenure has been created in a estate under partition, the Collector shall, under section seventy-five, report the case to the Commissioner, who, if satisfied that the revenue of the parent estate is sufficiently secured, shall direct the tenure to be specially registered.

Expenses of measurement, survey, or local enquiry.

India Act XI of 1859, section 46.

79. The actual expenses of any measurement, survey, or local enquiry made under sections seventy-five and seventy-seven shall be borne by the person who applies for the registry of his tenure or farm, and may be realized under the provisions of the Public Demands Recovery Act, 1880; and such person may be required by the Collector from time to time to make such payments on this account as he may consider necessary.

Effect of entry in the special register.

Ditto, section 50.

80. (1) Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a degree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue:

Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud.

(2) The tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

Protection of tenures pending enquiry in case of sale of parent estate for arrears of revenue.

Ditto, section 51.

81. Tenures and farms described in clause (*c*) of section sixty-five, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section seventy-five, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the revenue authorities upon such application be in favour of the claimaint.

New

Period within which applications may be made.

82. Applications for common or special registry or for registration under this Part may be made at any time on payment of the fee prescribed in the fourth schedule hereto annexed:

Provided that the deed or deeds constituting or creating the tenure for registry or registration of which application is made shall have been duly registered within the period, in the manner and at the place prescribed by the Indian Registration Act, 1877.

PART VII.

Miscellaneous Provisions.

India Act XI of 1859, section 49, modified

Order of Commissioner under Part VI open to revision within one year

83. The order of a Commissioner for the special registry of a tenure under the provisions of Part VI of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the Local Government, on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

Ditto, section 48.

Suit for cancelment of registry of a tenure or farm.

84. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

New
Vide Bengal Act VII of 1880, section 15.

Collector may refer certain cases to his subordinates.

85. (1) The Collector may refer to any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him any application under sections twenty, twenty-one, twenty-two or twenty-seven, any case arising under section twenty-nine, any application under section sixty, and any application for common registry under section seventy-two, and such officer as aforesaid shall hear and determine such application or case accordingly.

(2) The provisions of this Act shall apply to any such officer hearing or determining such applications and cases.

(3) All orders passed by any officer subordinate to a Collector shall be appealable to the Collector within fifteen days; all orders passed by a Collector shall, subject to the provisions of this Act, be appealable to the Commissioner within thirty days, and all orders passed by a Commissioner shall, subject to the provisions of this Act, be appealable to the Board within sixty days, after the passing of such orders respectively.

New.

Powers for taking evidence.

86. The Commissioner, the Collector, and every officer to whom any application or case may be referred by the Collector under the last preceding section, shall have the powers conferred on Civil Courts by the Code of Civil Procedure for compelling the attendance of witnesses, and the production of evidence, and for examining witnesses in any enquiry or appeal which he may be empowered to make or entertain under the provisions of this Act.

Fees leviable under certain sections.

87. The Collector on the part of Government shall demand from applicants under the sections mentioned in the first column of the fourth schedule hereto annexed the fees specified in the third column thereof, which schedule shall be taken as part of this Act, and applications under the said sections shall not be received unless the said fees are tendered therewith.

Bengal Act III of 1862, section 3.

Regulations to be in force in certain estates.

88. The provisions of Regulation VII of 1822 and Regulation IX of 1825, shall be in force in every estate, in any part of which, a measurement, survey or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

India Act XI of 1859, section 60.

THE FIRST SCHEDULE.

(Referred to in section 2.)

Regulations of the Bengal Code.

Number and year.	Subject.	Extent of repeal.
1	2	3
V of 1812 ...	A regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 24 and 25.
XI of 1822 ...	A regulation for modifying and explaining the existing regulations relative to the sale of land for the recovery of arrears of revenue, &c.	Section 38.

Acts of the Governor-General of India in Council.

XII of 1841 ...	An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.	Section 2.
XI of 1859 ...	An Act to improve the law relating to sales of land, &c.	The whole Act.

Acts of the Lieutenant-Governor of Bengal in Council.

III of 1868 ...	An Act to amend Act XI of 1859 ...	The whole Act.
VII of 1868 ...	An Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue.	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.
II of 1871 ...	An Act to amend the procedure for the recovery of arrears of land revenue in respect of tenures not being estates.	The whole Act.
VII of 1876 ...	An Act to provide for the registration of revenue-paying and revenue-free lands, &c.	Sections 69, 70, 71, 72, 73 and 74.
X of 1879 ...	An Act to amend the law relating to the Court of Wards.	Sections 23, 24, 25 and 26.
III of 1881 ...	An Act to amend the Court of Wards' Act, 1879.	Sections 2 and 4.

THE SECOND SCHEDULE.

(Referred to in section 43.)

Form of Attestation.

I hereby attest that all the notifications, notices and proclamations required by sections in the case of the sale of estate, tauzi No. (or share of estate, tauzi No.) for an arrear of revenue are reported by the Collector's establishment to have been duly issued and purport to have been duly posted and served.

C. D. A. B.

Deputy Collector. *Collector of*

THE THIRD SCHEDULE.

(REFERRED TO IN SECTION 56.)

Certificate.

I certify that A. B. has purchased under Act No. the estate (*or share of an estate, or independent tenure*) specified below, standing in the tauzi of the district of and that his purchase took effect on the day of (*being the day after that fixed for last day of payment*).

(Signed)

Collector.

SPECIFICATION.

(*if of an entire estate.*)

Tauzi number
Name of estate
Name of the former proprietor
Revenue

(*if of a share of an estate.*)

Tauzi number of the entire estate
Name of the entire estate
Revenue of the entire estate
Description of the share sold
Subordinate tauzi number of the share sold
Name of the former proprietor of the share sold
Revenue for which the share sold is separately liable

(*if of an independent tenure.*)

Tauzi number or number on Collector's register
Name of the tenure
Revenue
Name of the former tenure-holder

THE FOURTH SCHEDULE.

REFERRED TO IN SECTIONS 11 AND 82.)

Fees.

Section.	Nature of application.	Fees payable.
1	2	3
14	For registering an address to which notice of default may be sent.	Two rupees yearly.
15	For deposit of money or securities to protect estate from sale.	Half per cent. on the amount deposited.
15	For interest on securities so deposited drawn by the Collector.	Half per cent. on the amount drawn.
5	For withdrawal of a deposit so made.	Half per cent. on the amount withdrawn.
17	For deposit for protection of estate by non-proprietor.	Half per cent. on the amount deposited.
19, 20 or 21.	For opening separate account in respect of a share or interest in an estate.	If the revenue of the estate do not exceed Rs. 1,000—at the rate of ten per cent. upon the revenue. If the revenue of the estate exceed Rs. 1,000—at the rate of ten per cent. on Rs 1,000 and two per cent. on all above that amount.
66, 69 or 70.	For registry of tenures ..	Two rupees on each application.

No. 2299, dated Calcutta, the 29th May 1893.

From—H. H. RISLEY, ESQ., C.I.E., Secretary to the Government of Bengal, Revenue Department,

To—The Secretary to the Government of India, Revenue and Agricultural Department.

WITH reference to the correspondence ending with this Government's letter No. 4447L.R., dated the 19th December 1892, on the subject of the Draft Bills prepared by Mr. Beames for the amendment of the Revenue Sale Law, XI of 1859, and the Public Demands Recovery Act, VII (B.C.) of 1880, I am directed by the Lieutenant-Governor to submit, for the orders of the Government of India, the following report on the history of those Bills and on the objects of the amendments which it is now proposed to introduce into them.

2. The proposal to amend these two laws was first placed before the Government of India by Sir S. C. Bayley in Mr. Buckland's letter No. 3674—1230L.R., dated 28th September 1889, and on receipt of their sanction, Mr. J. Beames, Commissioner of the Presidency Division, was deputed to recast the existing Acts with the necessary amendments. In May 1890 he submitted his two draft Bills, which have since been carefully redrafted and revised under the Lieutenant-Governor's instructions. In the case of the Revenue Sale Law Bill, which it will be convenient to discuss first, the sections of the old Act (XI of 1859) have been arranged in their natural order, so as to correspond with the actual course of events succeeding an arrear of revenue, and the subsequent amending Acts have been embodied in the draft. Of the further alterations that have been introduced, the principal are briefly noted below, a fuller explanation of the more important provisions being given in subsequent paragraphs:—

(*a*) Definitions of the terms used in the Act have been supplied and arranged in alphabetical order.

(*b*) An arrear of revenue has been defined in section 5, so as to avoid all reference to the obsolete instalments which were fixed to fall due in every month or nearly every month in the year, when the original decennial settlement was made. These have long been superseded by the system under which "latest days of payment" are fixed according to section 3 of Act XI of 1859, and those are the real dates which govern the payment of land revenue and set the sale procedure in action. In short, the definition, as now drafted, merely brings the law into correspondence with the actual practice of the Revenue officers.

(*c*) Under section 3 of Act XI of 1859, the Board has power, independently of Government, to determine the latest days of payment. In practice, however, this power has only been exercised with the previous approval of Government, and accordingly section 6 has been worded so as to make the action of the Board, in respect of fixing these days, expressly subject to the sanction of Government. The four classes of arrears and demands for which Act XI of 1859 requires a special notification to be issued have been reduced by section 8 of the Bill to one, viz., arrears accruing on the two kinds of attached estates mentioned under "Thirdly" in Act XI of 1859, the other three classes being practically obsolete, or provided for by other laws. Opportunity has been taken to improve and define more precisely the procedure to be followed in notifying sales consequent on arrears.

(*d*) In order to meet the wishes of the High Court, as expressed in paragraph 17 of their letter No. 2321, dated the 29th August 1891, to the Government of India, a new section (section 10) has been inserted, providing that notices of sale shall be served locally on all recorded proprietors of the estate to be sold; and that the chaukidar and a member of the chaukidari panchayat of the village shall co-operate with the serving officer and sign an endorsement certifying that the notices have been duly served. Provision has also been made in sections 11 and 12 for the registration in the Collectorate of the names of persons interested in an estate, and for giving such persons timely notice of

the date of sale. It is believed that these sections, though differing in some particulars from the recommendations made by the Hon'ble Judges, will be sufficient to secure the attainment of the objects which the High Court have in view, and that they fully justify the withdrawal of the right to bring a civil suit to question the sale.

(*e*) *Sections* 14 *and* 15 are new. Instead of leaving to the Collector power to receive or reject a tender of arrears made after sunset on the last day of payment, such arrears are now made legally receivable at any time between the latest day of payment and the day before the day of sale, on payment of fines increasing with the increased delay in payment up to the limit of 20 per cent. of the arrear.

(*f*) *Section* 17.—When, in order to save an estate from sale, one of the proprietors pays in a sum in excess of the amount due from him for his interest in the estate, he may, with the sanction of the Collector, recover the excess payment from his co-sharers by the certificate procedure. The High Court object to this section on the ground that the question to be solved may be intricate and should not be tried by a junior or inexperienced officer. The Lieutenant-Governor feels the force of this objection, but prefers to retain the section for the present leaving the question to be considered in Select Committee, where some prudent modifications may be devised.

(*g*) *Section* 20.—The Collector can, after due notice, close *suo motu* a separate account which has been opened for a share of an estate whenever he becomes aware that the account is incorrect, *i.e.*, that it does not correspond to the interest in the estate held by the person in whose name it has been opened.

(*h*) *Section* 43.—Before holding sales for arrears, the Collector is to call for all the notifications and notices required by law to be issued, and satisfy himself personally, or through a Deputy Collector specially empowered for the purpose, that they have been properly issued, and an attestation of his having done this is to be placed on the record. Section 58 further provides that a certified copy of this attestation shall be given to the purchaser with the certificate of sale, and shall be conclusive evidence that all notices and notifications have been duly served.

(*i*) *Sections* 49 and 50.—The law, with respect to the setting aside of sales for arrears of Government revenue, has been considerably modified by these provisions, and in one direction greatly enlarged. Within a specified time after sale an application may be made to the Collector to set it aside, and if the applicant can show that material irregularity has occurred in the service of any of the notifications or notices, and that substantial injury has been caused thereby, the Collector is empowered to annul it. If he refuses, an appeal will lie to the Commissioner, but only on the ground that substantial injury has been caused by the sale. The order of the Commissioner on such appeal is final.

(*j*) *Section* 52 is entirely new, and has been inserted with the object of giving a recorded proprietor an equity of redemption. On appearing before the Collector within a fixed time, and depositing the amounts specified in the section, he is to be entitled, as a matter of right, to have the sale set aside.

(*k*) *Section* 53 lays down in comprehensive terms that no suit to annul a sale for arrears of Government revenue shall be entertained by a Civil Court.

(*l*) *Section* 55, corresponding to section 49 of Mr. Beames's original draft, has been modified so as to bring its provisions into accord with the new matter introduced into the Bill relating to appeals.

(*m*) *Under section* 56 (50 of Mr. Beames's Bill) the Collector is to give the purchaser a certificate of sale on application only, and no steps

for giving him possession will be taken till he has procured this certificate. The procedure has been assimilated to that of the Civil Procedure Code, sections 316, 318 and 319, for giving possession of immoveable property in execution of decree.

(*n*) *Sections* 59-60 (53-55 of Mr. Beames's Bill) deal with the disposal of surplus sale proceeds, and empower the Collector, when application is made by any one who is not the defaulting proprietor, to hold an enquiry, and refer the applicant to the Civil Court.

(*o*) *Section* 64.—The liability of the person declared to be the purchaser, and his right to collect rents from tenants and raiyats, are made to take effect from the last day of payment.

(*p*) *By sections* 72-82 the provisions of Act XI of 1859 for common and special registry of talukdari tenures have been extended to tenures of all descriptions without limitation of the period within which application may be made, and at a reduced fee of Rs. 2 in each case. The only condition imposed is that, where the tenures have been created by deeds, such deeds shall have been duly registered, and where not created by deeds, or where the deeds have been lost, proof that the tenure has been in existence for 12 years must be adduced.

(*q*) *Section* 86 has been introduced in order to confer the necessary powers for taking evidence on revenue officers proceeding under section 85.

(*r*) *Fourth Schedule.*—The schedule of fees prescribed for various applications under the Act has been revised.

3. These being the main changes which the Lieutenant-Governor considers advisable, I am now to state, as briefly as possible, the course of the discussion which these Bills have undergone. In June 1890, the Government of Bengal ordered the publication of Mr. Beames's Draft Bills in the *Gazette*, and forwarded copies of them to the Government of India for information, and to the Board of Revenue, the Legal Remembrancer, and five principal Associations of the Province for criticism; the Government of India were at the same time moved to obtain the opinion of the High Court upon them. The Government of India addressed the High Court accordingly, asking for the views of the Hon'ble Judges upon the Bills. Replies were received in due course from the Legal Remembrancer and the Associations consulted: the Board reported at full length in their letter No. 89A., dated 7th February 1891, after consulting Commissioners and District Officers, and in August 1891 the High Court forwarded to this Government a copy of a report which they had addressed to the Government of India. As this report of the Hon'ble Judges raised some important new questions of principle, the Lieutenant-Governor thought it desirable further to consult the Board of Revenue before adopting the suggested emendations of the Bill. The Board's further views having now been received, His Honour is in a position to address the Government of India on the whole subject. A complete copy of the correspondence, set forth in the Appendix attached to this letter, is submitted for the information of His Excellency the Viceroy and Governor-General in Council.

4. The Lieutenant-Governor does not think it necessary at the present stage to comment at length upon the criticisms upon these Bills offered by the several Associations consulted. They appear to regard the Bills as introducing decided improvement into the existing laws, and naturally devote their attention chiefly to the sections in which it is intended to safeguard the interests of Government as contrasted with those of the zamindars. While anxious, for instance, to retain the right which it is proposed to give them, by section 14 of the Bill, of paying up their arrears of revenue up to the sixth day before the day of sale, they are almost unanimous in asking for a reduction of the proposed penalty of 10 per cent. on the arrears as drafted in that section, and two of them at least would leave in the hands of the Collector the discretion to exempt estates from sale, which it is a principal object of the contemplated legislation to take away. Similarly, the British Indian Association are opposed to the extension of the principle of registration to all tenures, so that, where such tenures have been registered, the parent estate defaulting in payment of land revenue would have to be sold at auction subject to those encumbrances. The existence of such tenures diminishes the sale

value of a defaulting zamindari, and on this ground it is not unnatural that an Association composed of landlords should deprecate the extension of the principle of registration of tenures. It appears, however, equitable to the Lieutenant-Governor that tenure-holders should be capable of protecting themselves from the consequences of the *laches* of the proprietor for which they are not responsible, and it should not be open to the zamindars first to derive a consideration from the creation of tenures, and then to derive a second consideration from the same land by allowing it to go to sale free from encumbrances. Actual instances of such malpractices are on record. The suggestions offered on less important matters have been submitted to careful scrutiny, and such alterations as appear advisable have been made in the Draft Bill.

5. The Board, in their letter of February 1891, have entered into a full and valuable criticism of the different details in which the Bill makes changes in the existing law. Many of these have been embodied in the revised draft now submitted; and other small points do not require discussion here. The two most important changes effected in the Sale Law are those by which precision is given to the rules which govern the Collector's procedure in accepting payment of a default after the last day and before the sale day, and those which attempt to lay down a more satisfactory and efficient system of serving processes and notices. These two points deserve separate mention and explanation here.

6, By section 18 of Act XI of 1859, a Collector is authorized to use his discretion, at any time before the sale of an estate (or a share) shall have commenced, to exempt such estate (or share) from sale, but the section contains no instructions for the guidance of Collectors in the exercise of their discretion; the orders of the Board and Government issued from time to time have inculcated leniency, but the discretion allowed has necessarily been exercised without uniformity; so that landed proprietors have been left in uncertainty and Collectors exposed to the risk of errors and reprimands. The proposals contained in the Bill are—(1) to give defaulting proprietors the right of paying in arrears of revenue up to the evening of the sixth day before the day fixed for the sale of defaulting estates on payment of a penalty of 10 per cent. on the amount of the arrears, and (2) to allow the Collector to accept such arrears and an increased penalty even up to the day preceding the day of sale. The effect of these proposals, if accepted, will depend largely upon the amount of penalty to be required, upon the question whether it is to be absolutely fixed or variable at discretion, and upon the test to be applied as to what constitutes an extreme case. The Board, in paragraphs 8 and 9 of their letter No. 89A., dated the 7th February 1891, have examined fully the considerations which have to be taken into account. The Lieutenant-Governor is of opinion that it is essential to preserve the importance of the kist day, *i.e.*, the latest day of payment as fixed under section 3 of Act XI of 1859, now reproduced with some change as section 6 of the Draft Bill, and he is prepared to accept the Board's conclusion that the Legislature should provide as follows for payment of the Land Revenue:—

(*a*) up to kist day, as a matter of right of the payer, without any penalty;

(*b*) up to sunset of the sixth day before the sale day, as a matter of right of the payer, on payment of a fixed rate of penalty;

(*c*) during the last five days before the sale day, as a matter of right of the payer, on payment of double the fixed rate of penalty;

(*d*) on the sale day, no opportunity of any sort to be allowed to a defaulter to protect his estate from sale: the sale to be obligatory.

7. In sections 43 and 58 of the Bill to amend the Revenue Sale Law, there has been embodied a procedure originally suggested by Mr. Beames to meet the difficulty caused by the High Court's ruling in Lala Mobarak Lal's case.* It is provided that, after personal inspection of all the notifications and notices and the returns of service thereof, the Collector shall on the day of sale duly attest in a proceeding that all the requirements of the Act in respect of the publication of notifications and notices have been complied with, that a certified copy of such attestation shall be given with the certificate of title to an auction-purchaser, and that such attestation and certificate of title shall

* XI, I. L. R., Cal., p. 2000.

together protect the sale from being upset on the grounds of any omission, informality or irregularity as regards the serving or posting of any notification or notice. In paragraph 18 of their letter, dated 7th February 1891, the Board have proposed a different form of attestation from that suggested by Mr. Beames, but generally accept the principle of the section. The High Court's proposals aim at further measures for effecting this end, and these will be adverted to later on.

8. The High Court's letter of 29th August 1891 was referred for examination to the Board of Revenue on the 6th October 1891, and the Board's reply was received on the 12th September 1892. As regards the Bill to amend the Revenue Sale Law, the views of the High Court are contained in paragraphs 16 to 19 of the letter of 29th August 1891. Those views were, as the Lieutenant-Governor thought, misunderstood by the Board of Revenue, and in answer to his inquiry, the Hon'ble Judges, in their letter of the 5th January 1893, formulated them more clearly. In the earlier letter, they observe that, under Mr. Beames's Bill, as under the existing law, after the Collector had sold an estate and the regular series of appeals to the Revenue authorities had been exhausted, the person whose estate had been sold could bring a regular suit in a Civil Court to set aside the sale on certain grounds. They go on to point out with great force, and in a tone with which His Honour entirely agrees, the evil of two costly series of litigation—one before the Revenue authorities and another in the Civil Courts. They consider that the Collector should be the final authority to decide conclusively, subject to the control of his official superiors upon the question of the arrear due; nor would they permit a suit to be brought in a Civil Court to dispute or set aside a sale on any other grounds, such as those of defect of jurisdiction or irregularity in the proceedings. But, as conditions precedent to this barring of all recourse to the Civil Courts, they stipulate for two things—a high standard of efficiency in the service of notices, and a right of redemption after sale on payment of the demand with penalty and costs, analogous to that conferred on judgment-debtors in suits for arrears of rent by section 174 of the Bengal Tenancy Act. They further explain that, in order to secure that notices of intended sales should really be efficiently served, they would require—

(*a*) that notices should be served by peons of the Munsif's Court, not by those of the Revenue Courts;

(*b*) that the police should co-operate so far as to secure the attendance of the village chaukidar and panchayat;

(*c*) that an endorsement of the service of notice should be signed by the chaukidar and panchayat;

(*d*) that when there is in the Collectorate the registered address of the defaulter, a duplicate notice should be sent by registered letter to that address.

9. The Board have to a considerable extent missed the intention of the High Court's letter, and so much of their reply as is based upon this misconception may be passed over. For instance, they argue that the law does not require direct notices to be served upon the defaulter except in some special cases of default, as it is based on the old principle that the estate itself, and not the proprietor, is responsible for the satisfaction of the Government demand. The meaning of the High Court, however, is that great importance attaches to informing the defaulter, not of his default, but of the date fixed for the sale, in order that he may attend and secure that a fair price is bid for the property. From this point of view His Honour agrees with the Court, and would desire that the utmost efforts should be made to secure the due service of notices—an object which section 43 of the Bill is specially intended to achieve.

10. As to the first of the four special measures summarised above, which are intended to ensure this end, the Lieutenant-Governor is constrained to agree with what is written in the 29th paragraph of the Board's letter. He cannot perceive any reason for holding either that the Civil Court peons are more honest, or that they have more knowledge of localities and persons in the interior of the district than the peons of the Revenue Courts; and he trusts that the Honourable Judges will, on reconsideration, agree that the Board's objections to their proposal are valid.

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11. Sir Charles Elliott accepts the second and third proposals of the High Court, but does not propose to include the second in the provisions of the Bill. The object can be better secured by executive orders, and he proposes to instruct the Police Department to use their weight and authority in impressing on chaukidars and panchayats that it is their duty to assist the process-peons in this way. This might be entered in the list of his duties which every chaukidar has to learn by heart, and is catechised upon when he makes his weekly attendance at the thana.

12. The fourth measure proposed had already been introduced by Mr. Beames in section 14 of his Bill, which, with some slight alterations suggested in paragraph 10 of the Board's letter of 7th February 1891, and the further alteration that the notice referred to is one to inform the person interested, not of his default, but of the date fixed for the sale of his estate, is repeated in sections 11 and 12 of the Bill now submitted to the Government of India.

13. The second main provision on which the High Court insist is that the defaulter should have a right to redeem his estate within a fixed time on payment of a penalty and of interest on the purchase money. This is a question which has lately been before the Supreme Legislative Council, and in the debate of the 9th March 1893, the Lieutenant-Governor announced his adhesion to the principle which has since been embodied in a Bill presented by the Hon'ble Dr. Rash Behari Ghose, and published in the *Gazette of India* for March 11th. He has little doubt that the Board are justified in predicting, in paragraph 37 of their letter of 12th September 1892, that the result of such a procedure will be to decrease the price obtained at a sale, and might involve the redeeming proprietor in difficulties with the purchaser. He has always understood that, as a general rule, estates fetch a full price at revenue sales, because they are sold free of encumbrances for the most part, and an absolutely secure title is given. On the other hand, no doubt it does occur sometimes that, through a conspiracy of silence, an estate goes below its value, and it would be most desirable that means should be found to obviate this "extreme hardship," as the High Court rightly call it. On these grounds, Sir Charles Elliott thinks it better to insert a section to give effect to the High Court's proposal. The question will be fully discussed in considering Dr. Rash Behari's Bill, and the conclusion to which the Government of India may come in that case will influence the insertion or exclusion of the section in this Bill. It will be observed that the penalty proposed (10 per cent.) is double of that suggested in Dr. Rash Behari's Bill, which is, in His Honour's opinion, too small.

14. As a corollary to these changes, the whole of what was Part VII, of the power of Civil Courts," in Mr. Beames's Bill has been omitted, and a single section introduced providing that no Civil Court shall entertain a suit to set aside a sale either on the plea of non-indebtedness, or of irregularity in procedure, or want of jurisdiction, or for any other causes. This clause has been inserted in the belief that it carries out the intention of the High Court's letter of August 1891, as further explained in their letter of 5th January 1893, and will be accepted by them. It is a very important section, and will no doubt be carefully examined by the Government of India. There is a further question whether it is within the competence of the Bengal Council, even with its present extended powers, to pass such a section.

15. Turning now to the Bill to amend the Public Demands Recovery Act, I am to enumerate the following changes which commend themselves to the Lieutenant-Governor:—

(*a*) *Section* 3 (3).—This has been amended in form, and the words "written instrument" have been added to meet the case specified in section 7 (*g*).

(*b*) The list of demands to which the certificate procedure is applicable has been made more complete by the addition, in section 7 (*c*) of the Bill, of the Acts passed since 1880. Sub-section (*a*) covers the case, provided for in section 17 of the Bill to amend the Revenue Sale Law, of excess payments of revenue made by proprietors to save estates from sale, and declared to be recoverable by the certificate procedure.

(*d*) In *section* 13 a proviso has been added empowering the Collector to refer suitable cases to the Civil Court.

(*e*) In *section* 16, as now drafted, the grounds on which a Civil Court may cancel a certificate have been narrowed down to two, namely, (1) that the amount had been paid before the certificate was made, and (2) that no part of the amount stated in the certificate was due.

(*f*) *Section* 20 has been introduced in deference to the remarks made by the High Court in paragraph 15 of their letter No. 2321 of the 29th August 1891. It corresponds to section 52 of the Bill to amend the Revenue Sale Law, and gives to a debtor, whose property has been sold under the certificate procedure, a right of redemption on payment of the demand with penalty and interest, analogous to that which is given to judgment-debtors under section 174 of the Tenancy Act.

(*g*) The reasons which have led to the introduction of section 22 are stated at length in paragraphs 19 to 26 of Mr Beames's statement of objects and reasons. Section 21 of Mr. Beames's draft, corresponding to section 22 of the draft now submitted, was intended to counteract the effect of the judgment of the High Court in the case of Sadhu-saram Singh *versus** Panchdeo Lal, by enumerating exactly the sections of the Code of Civil Procedure which are to apply to every execution issued to enforce a certificate. The amendment will secure that instead of appeals against certificate sales being required to be made to a Commissioner, and instead of a sale certificate being issued under section 28 of Act XI of 1859, and possession given under section 29 of the same Act of something which has not been sold, appeals shall be made to the Court which held the sale, and possession be given under the Code of Civil Procedure.

* XIV, I. L. R., Cal., p. 1.

(*h*) *Section* 23 gives to the Board of Revenue the authority now vested in the High Court of making rules under section 287 of the Code of Civil Procedure, regarding sales of immoveable property, with a view to the Board's framing such rules as may be suitable to the circumstances of certificate sales.

(*i*) *Section* 32 provides a tried and effective procedure for the service of notices under the Bill; the reasons which render a special procedure for serving notices necessary in the case of the Revenue Sale Law do not exist, or at any rate have not the same force in the case of the certificate procedure.

16. The High Court's letter of 29th August 1891 discusses the certificate procedure at considerable length. Their recommendations may be summarised as follows:—

(1) that the certificate procedure should be limited—

(*a*) to public demands in the strict sense of the term;

(*b*) to demands which can be ascertained simply by an examination of the public records under the control of the Collector (paragraph 11);

(2) that Revenue authorities should not be vested with incidental powers such as those relating to insolvency (paragraph 12);

(3) that when the service of the certificate is not followed by payment, the certificate should be transmitted to the local Civil Court for examination. The judgment-debtor should then be given the opportunity of appearing and electing one of two courses—either to pay the amount of the claim, or else to deposit the amount in Court, and so gain the right to resist execution on the ground that the sum claimed is not due (paragraph 13);

(4) that a debtor whose property has been sold should always be at liberty to come before the Court and pay the amount of the demand with a penalty and interest on the purchase-money, and thereupon to have the sale set aside (paragraph 15).

17. Under head (1), the High Court's argument was mainly directed against the inclusion in the class of public demands of rents due in estate under the management of the Court of Wards, and the Lieutenant-Governor asked the Board whether there was any reason why the conditions suggested by the High Court should not be fulfilled in the case of Wards' Estates. The Board's reply (in paragraphs 7—12 of their letter of 12th September 1892) is that demands on behalf of the Court of Wards partake but slightly of the character of claims made on behalf of a private individual; such estates are under Government officials, their records are open to inspection and their accounts are audited, so that the theoretical objection to the use of the certificate procedure hardly exists in case of such estates more than in respect of Government estates. "An estate," the Board observe, "under the Court of Wards is not liable to sale for arrears of revenue, and as the demands due to it from tenure-holders and raiyats are often so numerous and for so small an amount as to make a resort to the Civil Court in every case impossible, the management of the estate could not be carried on without the employment of a summary procedure. It is also the fact that the management of a Government estate, as regards the nature of the demand, is on all fours with that of an estate under the Court of Wards; yet the High Court have not objected to the employment of the certificate procedure in respect of demands due from the raiyats on a Government estate."

The principal which is now criticised is not a new one, but has been established for a long period of years. The Lieutenant-Governor thinks it unnecessary to go over the whole history of the matter, but he would invite a reference *inter alia* (1) to section XIX of Regulation VII of 1799, which rendered a certain stringent procedure, authorized for the recovery of arrears of rent due to proprietors and farmers, applicable to the Managers of Wards' Estates and to joint undivided estates, as well as to Collectors holding lands in attachment or under khas collection; (2) to the proceedings in the Bengal Legislative Council of the 13th and 20th March and 3rd April 1880, in connection with the Bill which became Act VII (B.C.) of 1880; (3) to the Hon'ble Mr. O'Kinealy's speech in Council on the 20th March, when he "agreed with the Hon'ble Advocate-General and Mr. Dampier that since the beginning of the British rule in India realizations in rent in Wards' Estate were subject to exactly the same procedure as that of Government estates, and the reason was that the Government having taken charge of the estates and looked after them considered itself justified in recovering amounts due to the estate by the same process as in Government estates;" (4) to the fact that, on the 3rd April 1880, when the Hon'ble Babu Kristo Das Pal in Council moved that the certificate procedure should not be applicable to the realization of rents in Wards' Estates, his motion was negatived almost unanimously, mainly on the ground that Government should be allowed such powers by reason of its fiduciary interest in Wards' Estates. The principle had been admitted when section 63 of Act IX (B.C.) of 1879 was passed; it was extended to the recovery of interest and costs by section 10 of Act III(B.C.) of 1881, and the Lieutenant-Governor does not see that any facts have come to light which require a reversal of this policy. It is true that there are cases where estates when first taken over are found to have their accounts in confusion, and the Board have, at the Lieutenant-Governor's request, issued orders that the certificate procedure is not to be employed in a Ward's Estate until a settlement and record of rights have been made therein, and that no certificate shall issue in any case where a question of right or title is involved. A copy of this Government's Resolution No. 1470L.R., dated 12th April 1892, in which the Lieutenant-Governor dealt with this matter, forms one of the enclosures of this letter, and a proviso has been inserted in section 7 of the Bill barring recourse to summary process where a question of right or title is involved.

18. As to the second point (the High Court's recommendation that the Revenue authorities should not be vested with incidental powers, such as those relating to insolvency), the gist of their objection is that whereas insolvency jurisdiction is entrusted to no Civil Court of a lower grade than that of District Judge, section 19 of the Public Demands Recovery Act, which section 22, clause (*n*) of the Bill reproduces, entrusts such jurisdiction to any Deputy Collector vested with a power of a Collector. The Board, in reply, state that the matter is not one of any real importance; there have been only 47 such cases within the last three years. But they point out that the clause is not a new one, that there is no proof that the powers given by the existing Acts have been abused, and that in

Madras insolvency jurisdiction is exercised by Munsifs, who are of standing corresponding to that of Deputy Collectors. The Lieutenant-Governor thinks that the conferment of this authority upon Deputy Collectors would, as the High Court urge, be objectionable; that section 23 of the Bill to amend the Public Demands Recovery Act has made it clear that the Collector of the district is not to delegate his powers in respect of insolvent debtors, and, on the whole, though the provision is not one of much importance, the Lieutenant-Governor thinks it might stand unaltered.

19. Under the next head the High Court propose a radical change in the procedure in certificate cases, leaving only the preliminary stage, as it now exists, untouched, and transferring the cases, after that stage is passed, to the local Civil Courts, where they would be treated as ordinary execution cases, except in this particular, that the debtor would be obliged, before disputing his indebtedness, to deposit the amount of the claim.

It may be mentioned here that the Honourable Judges write under a mistaken impression, in their 13th paragraph, that "in an enormous majority of cases the service of a certificate leads to the payment of the claim made, and obviates all further action." It is true that in practice the judgment-debtor often pays the demand on the first receipt of notice. During 1891-92 this occurred in 48,199 cases out of 159,700 certificates, *i.e.*, in about 30 per cent. of the whole number: but it should also be mentioned that in 70,541 cases payment was not made until steps were taken to enforce attachment.

20. The Board are strongly opposed to the suggestion that the execution of certificates should be made over to the Civil Courts. They think it a fallacy to hold that the execution of decrees is better done by the Civil Courts than by the Revenue authorities; and even if it were, there would be loss of power in making such cases over to an independent court, which would necessarily take more interest in the execution of its own decrees than in carrying out those of the Revenue Courts. High as the general reputation of the body of Munsifs stands as regards their judicial work, it cannot be denied that their procedure is often dilatory and unsystematic, and that this is especially so as regarding the execution of decrees. It is a matter of common repute that this is the weakest branch of the administration of Civil Justice. Execution cases require little judicial acumen or legal training: what they mostly need is system, punctuality, and attention to the prescribed technicalities of procedure. It is probable also *á priori* that the revenue nazirs' peons, working under the Collector, would be more under control and more likely to do well in the execution of the decrees of Revenue authorities, than Civil Court peons attached to Munsifs' Courts would be if employed on that work: in the latter case, the Civil Court peons would, for execution of decrees, be responsible to two authorities, and it would be only natural that they should do best the work of the Civil Courts to which they were attached, so that the revenue decrees would suffer.

21. On the other hand, it cannot be denied that the suggested procedure has an attractive side. It would relieve the Revenue Courts of a considerable amount of irksome work; it would transfer that work to a Court already largely employed in carrying on work of that class; and it would protect the Government from any loss, because, as the High Court writes, "what is proposed is that no person should contest a claim on the grounds of irregularity or want of jurisdiction, but only on the ground that the money demanded is not due, and that the amount claimed should be deposited in Court as a condition precedent to any further action in order to dispute the claim." But, on the whole, the Lieutenant-Governor considers that the objections to the proposed change are too weighty, and the loss of efficiency which would probably ensue would be too serious to allow him to accept the recommendation of the High Court in this respect.

22. At the same time the rest of the suggestions made by the High Court under this head (paragraphs 13-14 of their letter of 29th August 1891) appear to the Lieutenant-Governor to be eminently wise and sound. He fully concurs in their objection to the double series of litigation which is now open to parties—one before the Revenue authorities, and another before the Civil Courts; and he adopts their view that there should be no setting aside of the certificate after it has been carried into effect, on the ground of irregularity, and that no objection should be taken on the ground of jurisdiction. No suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder. It is

true that the Honourable Judges recommend this course only on condition that the execution case should be transferred, as above explained, to the Civil Courts; but Sir Charles Elliott submits that the same arguments apply to the present system, so long as the procedure in the Revenue Courts is as careful and accurate as that of any Civil Court, and follows the same procedure. His Honour is ready, as will be shown later on, to accept most of the proposals made by the High Court to ensure that on which they rightly lay so much stress—the honest and effectual service of processes.

23. The present procedure is that, after a certificate has been filed, a notice (to show cause why such certificate should not be executed) is issued to the judgment-debtor: he may then (*a*) file a petition of objection before a Revenue authority denying his liability, and he has an appeal to a higher Revenue authority; or (*b*) he may bring a civil suit to contest his liability on certain specified grounds: in certain cases the judgment-debtor must deposit the amount of arrears before the suit can be entertained. The effect of the High Court's proposal would apparently be to alter the second course (*b*) in such a way that the debtor must always deposit the amount of arrears before the suit is enterstained, and that the only ground on which the suit can be brought shall be those designated (1) and (3) in section 8 (*b*) of the Act (sections 15-16 of the Bill), *i.e.*, that the arrear was never due by the debtor, or has been liquidated.

24. The Board of Revenue are opposed to the High Court's proposals, and their objections are stated in paragraphs 19 to 22 of their letter of 12th September 1892. They think that the effect of the High Court's scheme is to cut away the power of the debtor to proceed under the course called (*a*) in the preceding paragraph, *i.e.*, to make an objection to the Revenue Court and an appeal to the higher Revenue authority. As interpreted by the Lieutenant-Governor, this will not be the effect: the right of objecting in the Revenue Court on technical grounds of irregularity, non-service of process, &c., and also on the substantial ground of non-indebtedness will remain: but the reference to the Civil Court will only be on the ground of non-indebtedness. The Bill, as now drafted, is therefore intended to carry out this part of the High Court's proposal.

25. In paragraph 23, the Board make the following suggestions for amending the present procedure in cases where the fact of indebtedness, which the certificate declares to exist, is disputed. These are (1) that contested (*i.e.*, objection) cases should be referred to the Civil Courts, (2 that execution should be stayed by the Collector upon receipt of notice from the Civil Court that the judgment-debtor has deposited the amount of the claim in Court and intends to sue, (3) that the Collector should be empowered to transfer any complicated or specially difficult case to the Civil Courts, (4) that the power of appeal to the Commissioner should be withdrawn, his powers of revision only being retained. The Lieutenant-Governor agrees in the third suggestion , but not in the others. The first of them would mean the substitution of the Civil Court for the Collector in section 15 of Act VII (B.C.) of 1880 (section 17 of the present Bill) and the alteration of the present law by which petitions of objection are referred by the Certificate Officer for hearing and determination to any subordinate of the Collector. As a matter of practice they are usually referred to the Requiring Officer, *i.e.*, the officer who makes a requisition on the Certificate Officer for the issue of a certificate. Objection has sometimes been taken to the arrangement that the officer who asked for a certificate to issue should be the officer to hear and determine objections to it. But he is certainly the officer who, as possessing the records and accounts on which the claim is based, has the fullest knowledge of the case, and there is no reason to question his impartiality in deciding whether a mistake has been made or not. On these grounds the Lieutenant-Governor would prefer to retain the existing system.

26. The fourth recommendation of the High Court is supported by the Board, though with some misgivings; it is opposed by some officers of considerable weight; while it is approved of by the majority of the experienced officials who have been consulted. It is probably correct to anticipate that the result of making all sales liable to be set aside will be to reduce the auction price; but this risk should perhaps be run, rather than inflict on the debtor what Judges rightly call the frightful penalty of having his estate sold for a fraction of its value, and himself reduced to ruin, through his neglect to pay what may be only a trifling sum. The safeguards which the Board recommend, and

which the Honourable Judges would probably agree to, seem to be necessary; viz., that the time allowed for redemption of purchase should be short, and that the debtor should be required to pay a heavy penalty (a portion of which should be paid to the purchaser as compensation), and also a high rate of interest on the purchase-money. Section 20 has been introduced into the Bill to give effect to these provisions. The remarks already made in paragraph 13 of this letter on section 52 of the Revenue Sale Bill apply to this section also.

27. With regard to the remarks made in paragraph 3 of your office letter No. $\frac{305}{\text{ISD}-1}$R., dated 9th June 1890, that the absence from the Revenue Sale and Public Demands Recovery Laws of provisions for the arrest of the defaulter and distraint of his moveable property such as exists in other provinces had been noticed by His Excellency the Viceroy and Governor-General in Council, and that it seemed to be worthy of consideration whether the addition of some such provisions would not facilitate collections, and at the same time obviate the necessity of sales of immoveable property except as a last resort, I am to invite a reference to paragraphs 63-78 of the Board's letter No. 89A., dated 7th February 1891, in which the observations of the Government of India have been thoroughly examined both historically and with regard to present circumstances. His Honour is of opinion that any proposal to introduce provisions for the arrest and imprisonment of person defaulting in the payment of land revenue would be unsuitable to this Province, as well as unnecessary. The principle that the estate and not the person of the proprietor is to be held responsible for the land revenue is the basis of the Revenue Sale Law in Bengal, and, if properly safeguarded and administered, is adequate for the purposes of Government. The system in force in the permanently-settled Province of Bengal has long been distinct from that obtaining in the North-Western Provinces; and the process of sale as the first and the last process was found to work most satisfactorily, as remarked by the Hon'ble J. P. Grant in the Legislative Council of the Governor-General, on the 22nd December 1855, and was deliberately extended to Cuttack by Act XI of 1859. In the case of Act VII (B.C.) of 1880, the Board have shown that the whole tendency of the certificate procedure is to have recourse to sale only in the last resort, and to afford the judgment-debtor every reasonable opportunity of saving his property. In this case, too, His Honour is wholly averse from the imprisonment of defaulters unless fraudulent concealment of property can be proved against them. Even in the North-Western Provinces and the Punjab, Sir Charles Elliott believes that actual imprisonment of the person has almost, if not entirely, died out: and in the case of rent defaulters in the Government khas mahals, where the law still allows this procedure, His Honour has disapproved it and directed it to be discontinued.

28. I am to enclose herewith a copy of the revised Bills, with such alterations introduced, as His Honour is prepared, as at present advised, to recommend for adoption by the Legislature. Sir Charles Elliott trusts that these proposals for amending the existing Revenue Sale Law and Public Demands Recovery Act may receive the approval of His Excellency the Governor-General in Council.

29. It remains for consideration whether the contemplated legislation should take place in the Legislative Council of His Excellency the Viceroy and Governor-General or in the Bengal Legislative Council. In July 1890, Sir Steuart Bayley was advised in the Legislative Department of this Government that Mr. Beames's Bills, as they then stood, contained nothing beyond the legislative powers of the Bengal Council, but at the same time it was pointed out that, as the Bills might be very considerably modified before becoming law, more especially in respect to the provisions dealing with procedure, it was far from unlikely that in attempting to provide convenient machinery for carrying out the provisions embodied in the measures, the Bengal Council would be greatly hampered by the limited legislative power which it possesses. It does not appear to Sir Charles Elliott that the alterations which he would accept in Mr. Beames's Bills are of sufficient importance to affect the opinion above mentioned of the Legislative Department of this Government, except as regards section 53 of the Revenue Sale Bill already referred to above. He would be glad now to have definite instructions, either permitting him to proceed with the two Bills in the Bengal Legislative Council, or else instructing him that they will be taken up in the Supreme Legislative Council.

Appendix referred to in paragraph 3 of letter No. 2299, dated 29th May 1893, from the Secretary to the Government of Bengal, to the Secretary to the Government of India, Revenue and Agricultural Department.

1. Letter No. 288T., dated 12th July 1890, from the Assistant Secretary to the Government of Bengal, Legislative Department, to the Secretary to the Government of Bengal, Revenue Department.
2. Letter No. 8, dated 8th October 1890, from the Honorary Secretary, East Bengal Landholders' Association, to the Secretary to the Government of Bengal, Revenue Department.
3. Letter No. 338T.—R., dated 14th October 1890, from the Officiating Secretary to the Government of Bengal, to the Registrar of the High Court of Judicature, Calcutta.
4. Letter No. 10, dated 17th November 1890, from the Secretary to the Bihar Landholders' Association, to the Under-Secretary to the Government of Bengal, Revenue Department.
5. Letter No. 951, dated 18th November 1890, from the Superintendent and Remembrancer of Legal Affairs, to the Secretary to the Government of Bengal, Revenue Department.
6. Letter No. 957, dated 18th November 1890, from the Superintendent and Remembrancer of Legal Affairs, to the Secretary to the Government of Bengal, Revenue Department.
7. Letter No. 42, dated 25th November 1890, from the Secretary, British Indian Association, to the Officiating Under-Secretary to the Government of Bengal, General and Revenue Departments.
8. Letter No. 528, dated 29th December 1890, from the Honorary Secretary to the Central National Muhammadan Association, to the Under-Secretary to the Government of Bengal, Revenue Department.
9. Letter No. 89A., dated 7th February 1891, from the Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department.
10. Letter, dated 20th June 1891, from the Honorary Secretary to the Indian Association, to the Secretary to the Government of Bengal, Revenue Department.
11. Letter No. 2322, dated 29th August 1891, from the Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of Bengal, Revenue Department.
12. Letter No. 610T.—R., dated 6th October 1891, from the Officiating Secretary to the Government of Bengal, to the Secretary to the Board of Revenue, Land Revenue Department.
13. Resolution of the Bengal Government, No. 1470L R., dated 12th April 1892.
14. Letter No. 821A., dated 12th September 1892, from the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department.
15. Letter No. 4431L.R., dated the 17th December 1892, from the Secretary to the Government of Bengal, Revenue Department, to the Registrar of the High Court of Judicature, Calcutta.
16. Letter No. 36, dated 5th January 1893, from the Registrar of the High Court of Judicature, Calcutta, to the Secretary to the Government of Bengal, Revenue Department.

H. H. RISLEY.

Secretary.

DRAFT

OF A

Bill to amend the Public Demands Recovery Act, 1880.

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DRAFT

OF A

BILL.

To amend the Public Demands Recovery Act, 1880.

WHEREAS it is expedient to amend the law for the recovery of dues and debts demandable by Public Officers ; It is hereby enacted as follows :—

Bengal Act VII of 1880, section 1.

Short title.

1. (1) This Act may be called the Public Demands Recovery Act, 189 .

Extent.

(2) It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

(3) It shall come into force from the date on which it may be published in the *Calcutta Gazette* with the assent of the Governor-General.

Ditto, section 2.

Construction of this Act.

2. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force, for the recovery of any due, debt or demand to which the provisions of this Act are applicable.

Ditto, section 3.

Repeal of Act in Schedule.

3. (1) Act VII (B.C.) of 1880 is hereby repealed ; but this repeal shall not affect—

(*a*) the past operation of the Act hereby repealed, nora nything duly done or suffered thereunder

(*b*) any liability created under the Act hereby repealed.

Certificate under Act VII of 1880 to be enforced under this Act.

(2) Every certificate made under the enactment hereby repealed may be enforced under the provisions of this Act.

(3) And where in any Act, Notification or written Instrument passed, issued or made prior to the passing of this Act reference is made to Act VII (B.C.) of 1868 or Act VII (B.C.) of 1880, such reference shall, so far as it may be practicable, be taken to be made to the corresponding provisions of this Act.

Ditto, section 4.

Definitions.

4. In this Act, unless there be something repugnant in the subject or context,—

New.

(1) "Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta ; (*b*) without those limits, the Collector of a district, and includes subject to the provisions of section thirty-one, any officer specially appointed by the Local Government to perform the functions of a Collector under this Act, and any officer in charge of a sub-division of a district whom the Collector

such district, with sanction of the Commissioner of the Division, authorizes to perform such functions as aforesaid.

(2) "Collector of the district" means the officer in charge of the revenue administration of a district :

(3) "section" means a section of this Act :

5. In the following cases, that is to say— Bengal Act VII of 1880, section 5.

When an estate of tenure has been sold for its own arrears, and the sale proceeds are insufficient to liquidate the same ; or

(1) When, under the provisions of the Revenue Sale Act, 1891, or any law for the time being in force, an estate, share of an estate or an independent tenure, has been sold for the recovery of arrears of revenue due thereupon, and after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may under the aforesaid provisions be applied ;

When arrears of revenue due from a farmer are not paid on latest date of payment ;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section six of the Revenue Sale Act, 189 ;

The Collector may make a certificate.

the Collector may make under his hand and in Form No. 1 in the schedule hereto annexed, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

6. (1) Subject to the provisions of this Act, every certificate made under the provisions of the last preceding section shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor. Ditto, section 6.

Such certificate shall have the force and effect of a Civil Court decree as regards the remedies for enforcing it.

Judgment debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the certificate.

(2) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section ten, bring a suit in the Civil Court to have the said certificate cancelled on the ground that the arrears stated therein were not due by him ; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section twelve, then within fifteen days after such petition has been heard and determined.

Certificate when to become absolute.

(3) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted is decided against such judgment-debtor, such certificate shall become absolute and shall have to all intent and purposes the effect of a final of decree of a Civil Court.

Bengal Act VII of 1880, section 7

When any arrear of a public demand is unpaid by the person liable to pay the same.

7. When any arrears of the following public demands are unpaid by the person liable to pay the same, that is to say—

(a) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue;

(b) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him;

(c) any such demand, money, fee, duty, arrear, fine or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council:—

Act VIII of 1862, section 9.

Act IV of 1875, section 1.

Act V of 1875, section 57.

Act III of 1876, sections 42, 73 and 85.

Act VII of 1876, section 82.

Act VIII of 1876, section 138.

Act VII of 1878, section 36.

Act IX of 1879, sections 46, 57, 58A, 63 and 65A.

Act VI of 1880, section 26, clause 4, and section 38.

Act IX of 1880, sections 49 and 98.

Act II of 1882, section 70.

Act I of 1885, section 12.

or in the following sections of the following Acts passed by the Governor-General of India in Council:—

New

Act XIXof 1883, section 7.

Act XII of 1884, section 5.

Act VIII of 1885, section 114.

(d) in the case of a person to whom the collection of tolls has been farmed under the provisions of section eight of Bengal Act V of 1864, or of the sureties of such person—any sum of money due in respect of such farm;

(e) any arrears of revenue or rent payable to the Secretary of State for India in Council from any raiyat or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable; together with interest thereon allowed by any law for the time being in force;

(f) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent,

whether such arrears became due before or after the management devolved upon such Court or such Authorities:

Provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enchancement has been made—

by contract under the provisions of section twenty-nine of Act VIII of 1885, or

by decree of Court under the provisions of sections thirty-one, thirty-two, thirty-three or thirty-four of the said Act, or

by registered or other agreement under the provisions of sections forty-three, forty-six or one hundred and eighty of the said Act,

(*g*) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act.

(*h*) any fee, duty, tax or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act

Collector may make a certificate of the unpaid demand.

the Collector may make under his hand, and in Form No. 2 in the schedule hereto annexed, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office:

Provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force: or in case of any demand involving a question of right or title.

Provided also that a certificate filed under clause (*f*) of this section shall not cease to be in force by reason of the release of the estate from the charge of the Court of Wards.

Effect of certificate.

8. (1) Subject to the provisions of this Act, every certificate made under the last preceding section shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than the case mentioned in clause (*f*) of the said section, the Secretary of State for India in Council, and in the said case specified in clause, (*r*) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic, or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

Bengal Act VII of 1880, section 8.

(2) When a certificate has been made under the provisions of section sixteen of the Revenue Sale Act, 189 , the person on whose application the certificate has been made shall be deemed to be the decree-holder, and all proceedings taken by the Collector under this Act shall be taken at the instance, at the cost, and on the responsibility of such decree-holder and not otherwise.

New, adopted from Bengal Act IX of 1880, section 49.

Bengal Act VII of 1880, section 9.

In case of arrears of public demand payable to Officer other than Collector, such Officer may make requisition to Collector.

9. (1) When any arrear of any of the public demands specified in section seven is unpaid by any person liable to pay such public demand to a Public Officer other than a Collector, or when any such demand as is specified in clause (f) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may make to the Collector of the district, in which such person resides, or in which such demand is payable, or (if the Collector of the district shall so direct) to a Collector, a requisition in writing in Form No. 3 in the schedule hereto annexed:

Provided that no such requisition may be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

Such requisition given by a Manager to be verified and stamped as a plaint.

(2) Every such requisition given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a court-fee of the same amount as is payable under the Court-fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such requisition.

Collector may on receipt of such requisition make a certificate

(3) On receipt of such requisition, such Collector, if satisfied that such demand is justly recoverable, may make under his hand and in Form No. 2 in the schedule hereto annexed a certificate of the amount of such arrears so remaining unpaid, together with the cost of any court-fee paid in respect of such requisition under clause (2) of this section, and shall cause the same to be filed in his office.

(4) The provisions of the last preceding section shall apply to every such certificate.

Ditto, section 10

When a certificate filed notice to be given to judgment-debtor. Upon service of notice, certificate to bind immoveable property of judgment-debtor.

10. (1) When a certificate has been filed in the office of a Collector under the provisions of sections five, seven or nine, such Collector shall issue to the judgment-debtor a copy of such certificate and a notice in Form No. 4 in the schedule hereto annexed.

(2) From and after the service of such notice, such certificate shall bind all immoveable property of such judgment-debtor situated within the jurisdiction of such Collector in the same manner and with like effect as if such immoveable property had been attached under the provisions of section two hundred and seventy-four of the Code of Civil Procedure.

Copy of certificate may be sent to Collector of another district to be filed in his office; and upon its being filed, it shall bind immoveable property situate in such district.

(3) A copy of such certificate may be transmitted by post under the provisions of section two hundred and twenty-three of the Code of Civil Procedure to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such certificate shall, if the aforesaid notice

has been served, bind in like manner all immoveable property of such judgment-debtor situated within the jurisdiction of such last-mentioned Collector.

Bengal Act VII of 1880, section 11.

Moveable property of person against whom certificate has been made may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

81. (1) If in any case other than the case specified in clause (*f*) of section seven, the Collector is satisfied that any person against whom a certificate has been filed under the provisions of sections five, seven or nine is likely to conceal, or remove, or dispose of the whole or any part of his moveable property, and that the realization of the amount of such certificate will in consequence be delayed or obstructed, he may at any time after making such certificate direct an attachment of the whole or any part of the moveable property of such person.

(2) Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching moveable property, and subject to the provisions of section two hundred and sixty-six of the same Code.

(3) Such property may be sold for the purpose of satisfying such certificate, if no petition of objection is filed under the next succeeding section, or if any such petition is filed, then as soon as it has been heard and determined.

Ditto, section 12.

Any person served with notice under section 10 may file a petition of objection.

12. (1) If a judgment-debtor who has been served with a notice under section ten denies his liability to pay the whole or any part of the amoun for which such certificate has been made and filed against him, he may at any time within thirty days after service of such notice, or, where no such notice has been duly sêrved, within thirty days after the execution of any process for enforcing such certificate, file a petition denying his liability as aforesaid, before the Collector by whom such certificate has been made.

(2) Such petition shall be in, or as nearly as possible in, the Form No. 5 in the schedule hereto annexed:

New.

Provided that the Collector shall have power to order that no such petition shall be entertained unless at the same time the judgment-debtor deposits with the Collector the full amount of the sum entered in the certificate.

Bengal Act VII of 1880, section 13

Day to be fixed for hearing such petition. Collector to determine the liability of the petitioner. Certain provisions of the Code of Civil Procedure to apply to the inquiry.

13. (1) The Collector shall fix a day for hearing any such petition so filed, and upon such day or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such certificate was made, and may set aside or modify or vary the certificate accordingly.

(2) Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers:

New

Provided that, if in the opinion of the Collector, the petition discloses a case which could be more suitably tried by a Civil Court, he may refer the petitioner thereto.

Bengal Act VII of 1880, section 14.

Collector may award costs against petitioner. Costs how to be realised.

14. (1) The Collector shall have full power to direct that the costs or any part of the costs of such petition and of the hearing thereof shall be paid by the petitioner, or if his finding is in favour of the petitioner, then by the party at whose instance the certificate was issued, whether Government or the Court of Wards.

(2) In any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall be added to the amount entered in the certificate, and shall be recoverable as if the same had been originally entered therein.

Ditto, section 8 (b).

Judgment-debtor may bring a suit in the Civil Court to contest the certificate.

15. (1) The person deemed to be the judgment-debtor under the provisions of section eight may, at any time within one year from the date of the determination of the objection mentioned in section thirteen, bring a suit in the Civil Court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled, but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under section twelve the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission.

Certificate when absolute.

(2) If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Ditto, section 8 (b).

Grounds of cancelment of certificate by Civil Court

16. (1) No certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(a) that the amount stated in the certificate was actually paid or discharged before the making of such certificate;

(b) that no part of the amount stated in the certificate was due by the judgment-debtor under the certificate.

(2) Nothing herein contained shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

Ditto, section 15.

Collector may refer petition for hearing to Deputy Collector, etc.

17. (1) The Collector of a district or a Collector in charge of a subdivision may, by a general or special order, refer to any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any petition or petitions filed

under section twelve, and such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petitions accordingly.

(2) The provisions of sections thirteen and fourteen shall be applicable to any such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner to whom any such petitions have been so referred.

Bengal Act VII of 18 0, sectio 16.

Appeal from Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner. Stay of execution.

18. (1) An appeal from any order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector of the district within fifteen days, and an appeal from any original order of a Collector may, subject to the provisions of this Act, be preferred to the Commissioner within thirty days after the making of such order respectively.

New.

(2) It shall be lawful for the Collector of the district, with the sanction of the Local Government, to transfer such appeals, either by general or special order, to any Collector subordinate to him for hearing.

(3) Pending the decision of such appeal, execution may be stayed if the Appellate Authority so direct, but not otherwise:

Provided that, when the Local Government shall so direct, appeals from the original orders of a Collector who is not the Collector of the district may be preferred to the Collector of the district. Such appeals shall be preferred within fifteen days after the making of such order.

(4) In each case under this section, the day on which the order was passed shall be reckoned as the first day of the period.

Bengal Act VII of 1880, section 17.

Power of revision.

19. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner; but, subject to the provisions of this Act, the Commissioner and the Collector of the district, if so empowered by the Local Government, may in any case in which they think fit revise any order passed by a Collector, Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner.

New.

Application may be made for amendment of sale on deposit of amount stated in certificate; auction price and penalty.

20. (1) The person deemed to be the judgment-debtor under the provisions of section eight may, at any time within thirty days after any immoveable property is sold in execution of a certificate under section twenty-one, apply to the Collector to cancel the certificate and set aside the sale on his depositing—

(a) the amount stated in the certificate, together with costs, and with the interest thereon at twelve per centum calculated from the date when the certificate was filed up to the date when the deposit is made;

(b) the auction price for which the property was sold;

(c) as penalty a sum equal to ten per centum on the auction price.

(*d*) all outstanding charges payable to the Collector by the judgment-debtor under any Act for the time being in force.

(2) If such a deposit is made within thirty days the Collector shall pass an order cancelling the certificate and setting aside the sale.

(3) In the event of a sale being annulled by an order of the Collector under this section, the auction price for which the immoveable property was sold, together with the penalty specified in clause (*c*) shall be paid to the purchaser by the Collector.

(4) An order made by the Collector under this section shall be final.

Bengal Act VII of 1880, section 18.

Certificate may be enforced after one month from notice or when petition of objection disposed of.

21. Every certificate made under the provisions of sections five, seven, or nine may be enforced and executed with interest at six per centum up to the date of realization and costs upon the expiry of one month after service of the notice mentioned in section ten, or when any such petition as is mentioned in section twelve has been filed, then as soon as such petition has been heard and determined:

New

Applications for certificates for the recovery of arrears of rent shall be made within three years from the last day of the Bengali year in which the arrear fell due, where that year prevails and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails. In respect of other applications the ordinary law of limitation shall hold good.

Bengal Act VII of 1880, 19, cl. 1.

Certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money.

22. (1) Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement, and execution of decrees for money.

(2) The practice and procedure provided by the hereinafter specified sections of the said Code of Civil Procedure shall apply to every execution issued to enforce such certificate and realize the amount recoverable thereunder namely—

(*a*) sections 223, 224, 225, 226, and 228, concerning the execution of decrees out of the jurisdiction of the Court by which they were passed;

(*b*) section 234, concerning execution of decree against legal representative;

(*c*) section 235, concerning contents of application for execution of decree;

(*d*) sections 245, 245 A, 245 B and 254, concerning the mode of decrees;

(*e*) sections 266, 267, 269, 271, 272, 274 and 284, concerning attachments of property;

(*f*) sections 278, 279, 280, 281, and 283, concerning claims to attached property;

(*g*) sections 286, 287, 288, 289, 290, 291, 292, 293 and 294, concerning sales in execution of decrees;

(*h*) sections 296, 297, 298, 299, 300, concerning sale and delivery of moveable property;

(*i*) sections 306, 307, 308, 309, 314, 316, 317, 318 and 319, concerning sale and delivery of immoveable property.

(*j*) sections 311, 312, 313 and 315, concerning applications to set aside sales;

(*k*) sections 320, 321, 322, 322B, 322C, 322D, 323, 324, 324A, 325, 325A, 325B, 325C, 326 and 327, concerning the transfer to the Collector of the execution of certain decrees and the procedure to be followed in such cases;

(*l*) sections 328, 329, 330, 331, 332, 333, 334 and 335, concerning resistance to execution;

(*m*) sections 336, 337, 337A, 338, 339, 340, 341, 342 and 343, concerning arrest and imprisonment;

(*n*) the whole of the section contained in chapter XX, concerning insolvent judgment debtors;

(*o*) section 588, clauses (16) and (17), concerning appeals from orders.

Powers by whom to be exercised.

23. (1) In enforcing and executing such certificate all the duties, powers, and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such certificate or any copy thereof transmitted for execution under the provisions of section 223 of the said Code has been filed. Bengal Act VII of 1880, section 19, cl. (2)

(2) The power conferred on the High Court of making rules for the guidance of the Courts in the exercise of their duties under section 287 of the Civil Procedure Code shall in respect of proceedings under this Act, be exercised by the Board of Revenue.

(3) All such rules shall be published in the *Calcutta Gazette*, and shall thereupon have the force of law. Bengal Act VII of 1880, section 19, cl. (3).

(4) Subject to the control of the Collector of the district, and save and except in respect of the provisons relating to insolvent judgment-debtors any of the said duties, powers and authorities may be exercised by any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to such Collector.

Sale of immoveable property may be set aside, if certificate is set aside by a competent Court. Proviso.

24. (1) If any immoveable property is sold in execution of a certificate under the provisions of section twenty-one, and if such certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immoveable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest as such Court thinks fit. Ditto section 20

(2) Such order shall have the force of a decree and application for the execution of such decree shall be made within six months after the date thereof, otherwise the party in whose favour such order was passed shall lose all benefit therefrom;

Provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

(3) The provisions of this section shall no apply to a sale set aside under section twenty.

Bengal Act VII of 1880, section 21

Register of certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

25. (1) Every Collector shall cause to be kept in his office a register in such form as may from time to time be prescribed by the Board of Revenue, and shall cause to be entered in such register the particulars of every certificate made under this Act, which, or a copy of which, has been filed in his office.

(2) Such register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Ditto, section 22 (a).

Payment of sum due under a certificate may be made by instalments. Payment of instalments to be entered in register.

26. (1) Payment of the amount due under a certificate may be made by instalments, if the Collector who made such certificate so direct.

(2) The payment of any instalment shall be entered in the register mentioned in the last preceding section.

Ditto, section 22 (b)

When total amount satisfied, Collector to enter satisfaction on certificate and in register.

27. When the total amount due under a certificate has been paid and satisfied, the Collector in whose office such certificate was originally filed shall enter satisfaction upon such certificate under his hand and signature; and shall cause the same to be entered in the register mentioned in section twenty-five.

Ditto, section 22 (c).

Collector to communicate satisfaction to other Collector in whose office copy of such certificate has been filed.

28. When a copy of such certificate has been transmitted to another Collector, or when such certificate has been made under the provisions of section nine upon requisition from a Public Officer other than a Collector, or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

Ditto, section 22 (d).

Sum levied by Collector to whom copy of certificate sent to be transmitted to Collector who made certificate.

29. When a sum has been levied or received by a Collector in respect of a certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such certificate was originally made.

Ditto, section 23.

Certain officers to be deemed to be acting judicially in the discharge of their duties under this Act.

30. Every Collector of a district, Collector, Assistant Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner, and every such Public Officer as is mentioned in section nine shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850 passed by the Governor-General of India in Council.

Ditto, section 24.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

31. All Collectors of districts, Collectors, Assistant Collectors, Deputy Collectors, Assistant Commissioners and Extra Assistant Commissioners shall, in the performance of their

duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue; and no officer, although especially appointed to perform the functions of a Collector under this Act, shall exercise the appellate powers of a Collector under section eighteen, unless he is expressly authorized in that behalf by the said order of the Local Government, and, unless the contrary shall be expressly directed in such order, every officer so specially appointed shall exercise his functions subject to the control of the Collector of the district.

Board's Certificate Procedure Manual, section rule 12.

32. The provisions of sections 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84 and 85 of the Code of Civil Procedure shall be applicable, so far as circumstances permit, to the service of all notices issued under this Act.

Provisions regarding service of notices.

New.

SCHEDULE.

Form No. 1

(*referred to in section* 5.)

Certificate of Arrears of Revenue filed in the Office of the Collector of the district of (*name of district*).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of arrears of revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which arrears of revenue due.

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council from the abovenamed.

Dated this day of 18 . *A. B.,*

Collector of

Form No. 2.

[*referred to in section* 7 *and section* 9, *cl.* (3).]

Certificate of Arrears of Public Demands filed in the Office of the Collector of the district of (*name of district*).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made, and Public Officer [or Manager and of what estate] to whom due.

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council [or to A. B., a Ward of Court, or a Minor, or a Lunatic, by his next friend C. D.] from the abovenamed.

Dated this day of 18 . A.B.,

Collector of

FORM No. 3.

[*referred to in section* 9, cl. (1).]

REQUISITION.

To the Collector of the district of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this requisition is made.	Nature of the Public Demand for which this requisition is made.

The above sum of Rs. is due from the said
in respect of
Certified this day of

A. B.

(*Official designation.*)

FORM No. 4.

[*referred to in section* 10.]

NOTICE.

To (*Insert name of judgment-debtor*).

You are hereby informed that a certificate for Rs. due from you on account of has been this day made by me against you under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, and that such certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. you may within thirty days show cause why such certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. , unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immoveable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the certificate abovementioned is hereto annexed.

Dated this day of 18 . A. B.,

Collector of

FORM No. 5.

[*referred to in section* 12.]

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (name of petitioner) of (address).

SHEWETH—

That a certificate No. for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons:—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).

DRAFT

OF A

Bill to amend the Revenue Sale Law.

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DRAFT

OF A

BILL

To amend the Revenue Sale Law.

WHEREAS it is expedient to consolidate and amend the laws relating to the sale of land for arrears of revenue and other demands realizable as arrears of revenue in the territories administered by the Lieutenant-Governor of Bengal; It is enacted as follows:—

Preamble.

PART I.

Preliminary.

New.

Title, extent, and commencement.

1. (1) This Act may be called the Revenue Sale, Act, 189 .

(2) It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal, except the town of Calcutta and the scheduled districts other than the Sonthal Parganas, Western Jalpaiguri, the Western Duars, the districts of Darjeeling, Hazaribagh, Lohardaga, Palamau, Manbhum, the paigure, of Dhalbhum, and the Kolhan in the district of Singhbhum.

(3) It shall come into force on such date as the Local Government, with the previous sanction of the Governor-General in Council, may, by a notification in the *Calcutta Gazette*, direct.

New

Repeal.

2. (1) On the commencement of this Act, the Regulations and Acts mentioned in the first schedule hereto annexed are hereby repealed to the extent specified in the third column thereof; save so far as regards the trial of any suits that shall be pending at the time of the said commencement.

(2) This repeal shall not revive any office, authority or thing abolished by such enactments, nor affect the validity of anything done or suffered, or any right, title, liability or obligation accrued before the commencement of this Act.

(3) All rules prescribed, appointments made, powers conferred and notifications published under any such enactments shall, so far as may be, be deemed to be respectively prescribed, made, conferred and published under this Act.

(4) Any enactments or documents referring to any enactments hereby repealed, shall be construed to refer to this Act or the corresponding portion thereof.

(5) The trial of any suit which shall be pending at the time of the commencement of this Act, shall proceed and be completed as if this Act had not been passed.

Bengal Act VII of 1868, section 1, with additions from the Bengal Tenancy Act, VIII of 1885

3. In this Act, unless there be something repugnant in the subject or context,—

Definitions

(1) "Board" means the Board of Revenue for the Lower Provinces of Bengal:

(2) "Collector" mean the Collector of a district or a Deputy Commissioner of a non-regulation district, and includes any officer invested by the Local Government with the power of a Collector under this Act:

(3) "Commissioner" means the Commissioner or an Additional Commissioner of Revenue of a division:

(4) "estate" means any land or share in land subject to the payment to Government of land revenue, and included under one entry in the general register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force; or in respect of which a separate account may, in pursuance of section twenty-five of this Act, have been opened:

(5) "incumbrance" means a charge upon, or a claim against, land arising out of a private contract:

(6) "jurisdiction" of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers:

(7) "official year" means the commencing on the first day of April:

(8) "proprietor" means a person owning, whether in trust or for his own benefit, an estate, or a part or share of an estate, and includes any person by whom any estate or independent tenure is held directly under Government:

(9) "recorded proprietor" means any proprietor of an estate or share of an estate whose name, and the character and extent of whose interest in the estate, are registered in the general register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force:

(10) "revenue" is the sum payable annually to Government by the proprietor of an estate or independent "tenure" in respect thereof:

(11) "section" means a section of this Act:

(12) (*a*) "tenure" includes all interests in land whether rent-paying or lakhiraj (other than, estates as above defined); and all fisheries, which by the terms of the grants creating the same or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument:

(12) (*b*) "independent tenure" means a tenure the revenue of which is payable to Government.

Bengal Act VII of 1868, section 10.

4. Every estate shall, for the porposes of this Act, be deemed to be within the Collectorate of the Collector upon whose general register the revenue thereof may be borne,

Collectorate to include all estate borne on its roll.

although the whole or any portions of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situated, although the estate of which they form a part may, under this section, be deemed to be within the Collectorate of any other Collector.

PART II.

Proceedings before Sale.

India Act XI of 1859, section 2, altered in some respects.

Arrear of revenue defined.

5. If the whole or a portion of an instalment of revenue due under the settlement be unpaid on the latest day fixed for the payment of the same, as shall be determined by the Board with the sanction of the Local Government, the sum so remaining unpaid shall be considered an arrear of revenue.

Ditto, section 3.

Latest day of payment.

6. (1) The Board, with the sanction of the Local Government, shall determine upon what dates all arrears of revenue, and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction; in default of which payment, the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

(2) The Board shall give notice of the dates so fixed in the *Calcutta Gazette*, and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the Collector, in the Courts of the Judge, Magistrate and Munsifs, and at every police station of that district.

(3) The dates so fixed shall not be changed except by the Board, with such sanction as aforesaid, by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceing that in which the new date is, or dates are, to take effect.

Bengal Act VII of 1868, section II, as amended by Act I of 1871, slightly altered.

Power to sell independent tenures.

7. Whenever any revenue payable to Government in respect of any independent tenure shall be in arrear after the latest day of payment determined by the last preceding section, the Collector to whom such revenue is payable may cause such tenure to be sold in the manner and subject to the provisions hereinafter contained, for the sale of estates, for the recovery of arrears of revenue.

India Act XI of 1859, section 5, (Procedure in respect of issue of notifications, *new*).

Notification to be made in the case of certain descriptions of arrears.

8. (1) No estate and no share in any estate, and no independent tenure, shall be sold for the recovery of arrears accruing while—

(*a*) under attachment by order of any judicial authority, notice whereof has been received by the Collector from the

judicial authority, or by the production of an authenticated copy of the order of attachment by the proprietor or judgment-debtor, or any person appointed in his behalf; or

(*b*) managed by the Collector in accordance with an order made by any judicial authority:

otherwise than after the notifications prescribed by section nine and section ten, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been issued in the manner provided in those sections.

Notifications of sale to be issued.

9. (1) The Collector shall, as soon as possible after the latest day of payment determined by section six, issue notifications in the language of the district—to be affixed in his own office, and in the Courts of the Judge and Munsif and at the police station, within whose jurisdiction the estate or share of an estate, or the tenure to which the notification relates, is situated; or if the estate or share of an estate, or the tenure be situated within the jurisdiction of more than one Munsif's Court or police station, in some one or more of such Courts or stations—specifying the estates or shares of estates, or independent tenures, which will be sold as aforesaid and the day on which the sale of the same will commence, which day shall not be less than thirty clear days from the date of affixing the notification in the office of the Collector.

India Act XI of 1959, section 6, as modified by Bengal Act VII 1868, section 3.

(2) If the revenue of any estate or share of an estate, or independent tenure, to be sold, exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate, or of such tenure, shall be published in the *Calcutta Gazette*.

(3) Except as hereinafter provided, all estates or shares of estates or independent tenures, so specified shall, on the day notified for sale, or on the day or days following, be put to public auction by, and in the presence of, the Collector, and shall be sold to the highest bidder.

Collector to serve notice on recorded proprietor.

10. (1) The Collector shall, at the same time as he shall issue the notifications prescribed in the last preceding section, (*a*) cause a notice to be served on the recorded proprietor of each estate or share of an estate, or independent tenure, to be sold under such notification; (*b*) in the case of an estate, share of an estate, or tenure falling under section eight, cause a notification to be issued in the manner hereinafter provided

New

(2) The notice or notification as the case may be, shall be in the language of the district and shall specify—

(*a*) the estate, or share of an estate or the independent tenure, of such proprietor notified for sale;

(*b*) the date on which such sale shall commence,

(3) The notice shall be served by delivering to the recorded proprietor, or if he cannot be found, to some adult member of his family, a copy thereof, signed by the Collector or by a gazetted officer authorized by the Collector in that behalf, and sealed with the seal of the Collector.

Explanation—A servant is not a member of the family within the meaning of this section.

(4) The serving officer shall require the person to whom the copy of the notice under clause (1) *a* is so delivered to sign an acknowledgment of service endorsed on the original notice.

(5) If such person refuses to sign the acknowledgment, then the serving officer shall fix up a copy of the notice on some conspicuous part of the usual or last known place of abode of the proprietor in the presence of the chaukidar and a member of the punchayet appointed for the village wherein such place of abode is situated, if such member is present in the village at the time of service, and shall require such persons to sign the endorsement.

(6) The notification referred to in clause (1)*b* of this section shall be issued by fixing up a copy of it at the cutcherry of the proprietor of the estate, or share of an estate, or tenure, or at some conspicuous place upon the estate, or share of an estate or tenure, in the manner provided in clause (5) of this section so far as may be; if the proprietor has no cutcherry, or if the serving officer charged with the duty of fixing up the notification is unable to discover the land which comprises the estate, or share of an estate or tenure, he shall, in the same manner and subject to the same conditions fix up the same at some conspicuous place of the village within which the estate or share of an estate or tenure is situated.

(7) After the notice has been served, or the notification fixed up, the serving officer shall return the original notice or notification to the Collector, with an endorsement thereon signed by such officer, stating the time and manner in which the notice or notification was served or issued.

New

Notices to persons registering name and address.

11. Any person interested in an estate or share of an estate, or independent tenure, whether as recorded proprietor, mortgagee, judgment-creditor, or otherwise, may apply to the Collector to register his name and address.

(2) Such application shall state the name and number on the Collector's rent-roll of the estate in respect of which it is made, or give a description sufficient to identify the tenure or independent tenure to which it refers, and shall be accompanied by the fees prescribed in the fourth schedule hereto annexed.

New

Collector to register name and address of applicant.

12. On receipt of the application and fee mentioned in the last preceding section, the Collector shall enter the name and address of the applicant in a register, the form of which shall be prescribed by the Board of Revenue, and shall, within one week of the date on which the notifications under section nine are issued, give him notice by registered letter of the date on which the sale of such estate or share of an estate, or independent tenure, will commence:

Provided that no sale held under this Act shall be void or voidable by reason of the person addressed not receiving such letter, if it be proved that the letter has been duly registered and posted.

13. Whenever an estate or share of an estate, or independent tenure, is notified for sale under section nine, the Collector shall cause a notification in the language of the district to be published in the manner prescribed by section ten, forbidding the raiyats and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

Notice to raiyats.

India Act XI of 1859, section 7—Modified and curtailed.

14. (1) If at any time between the latest day of payment determined by section six and sunset of the sixth day before the day of sale notified under section nine, any recorded proprietor or registered tenure-holder tender payment to the Collector of the following amounts :—

Collector empowered to exempt an estate from sale on receipt of certain specified amounts between the latest day and the sixth day before sale.

New

(a) the arrear of revenue due ;

(b) the interest at six and a quarter per centum per annum on the arrear of revenue due ;

(c) all outstanding charges payable to the Collector in respect of the estate or share of an estate, or the independent tenure, under any Act for the time being in force ;

(d) an additional sum equal to one-tenth of the arrear of revenue due.

(2) The Collector shall accept such payment, and shall thereupon exempt the estate or share of an estate, or the independent tenure, from sale, but not otherwise :

Provided that if such arrear shall exceed the sum of five thousand rupees, the additional sum, specified in clause (d) of this section, shall consist of a sum of five hundred rupees, together with an amount equal to five per centum of the arrear in excess of the sum of five thousand rupees :

Provided also that the the amount levied under clauses (b) and (d) above shall in no case be less than one rupee.

(3) If the sixth day before the day of sale be a Sunday or other close holiday, then payment may be tendered on the first office day after such sixth day before the sale.

15. If at any time during the days which may interfere between the time within which the arrear of revenue may be tendered for payment under the last preceding section and sunset of the day immediately preceding the day of sale, any recorded proprietor or registered tenure-holder shall tender payment of the amounts

Power of Collector to exempt estate or share of an estate, &c., from sale on receipt of certain specified amounts between the last date of tender under preceding section and day of sale.

New.

specified in clauses (*a*), (*b*) and (*c*) of sub-section (1) of the last preceeding section, and an additional sum equal to one-fifth of the arrear of revenue due, the Collector shall accept such payment and shall thereupon exempt the estate, or share of an estate or independent tenure, from sale, but not otherwise:

Provided that if such arrear should exceed the sum of five thousand rupees such additional sum shall consist of a sum of one thousand rupees, together with an amount equal to ten per centum of the arrears in excess of the sum of five thousand rupees.

Provided also that the amount levied under this section and under clause (*a*) of the last preceeding section shall in no case be less than one rupee

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PART III

Protection and Exemption from Sale.

CHAPTER I.—*Deposits.*

India Act XI of 1859, section 15.

Deposit for the protection of an estate from sale.

16. (1) If any recorded proprietor of an estate or share of an estate, or an independent tenure shall deposit with the Collector money or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the revenue of the entire estate or share of an estate, or the independent tenure, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate or share of an estate, or the independent tenure, the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate or share of an estate, or the independent tenure, not being paid before sunset of the latest day of payment determined by section six, the Collector shall apply to the payment of such arrear the said money or securities or such part thereof, or of any interest due on the said securities as may be necessary: and for this purpose, the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

(2) So long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate or share of an estate, or the independent tenure, for the protection of which the said deposit was made, shall be exempted from sale for arrear of revenue.

(3) All money and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

India Act XI of 1859, section 16

Withdrawal of the deposit.

Provided that it shall be competent to the person making a deposit under this section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

India Act XI of 1859, section 9.

Recovery of excess payments by certificate process.

17. (1) Whenever any recorded proprietor of an estate or share of an estate, or an independent tenure, shall have paid revenue, together with the amounts and additional sum specified in section fourteen or fifteen, in respect of such estate or share of an estate, or the independent tenure, in excess of the amount proportionate to his own recorded interest therein, he may, within fifteen days of such payment being made, move the Collector by written application to make a certificate as provided by the law for the time being in force for the recovery of public demands, specifying the revenue, amounts and additional sum which have been paid by such proprietor on account of the recorded share or interest of any other proprietor in the estate or share of an estate, or the independent tenure.

New. *Vide* also Bengal Act IX of 1880, section 49.

(2) Such application shall be verified by the applicant in accordance with the provisions of the Code of Civil Procedure for the verification of plaints, and shall bear a Court-fee stamp of the same amounts as is payable under the Court-fees Act for the time being in force, in respect of a plaint for the recovery of a sum of money equal that stated in such application.

(3) The Collector may, if he thinks fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; and the same notices shall be issued, and the same proceedings taken thereon, as in the case of such certificate.

India Act XI of 1859, section 9

Deposit receivable from persons not proprietors.

18. (1) The Collector shall, at any time before sunset of the latest day of payment, determined by section six of this Act, receives a deposit from any person not being a proprietor of an estate or share of an estate or the independent tenure, in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid; unless before that time, the arrear shall have been paid by a defaulting proprietor of the estate or tenure.

(2) In case the person so depositing, whose money shall have been credited as aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share of an estate, or the independent tenure, from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said person to be put into temporary possession of the said estate or share, of an estate, or the independent tenure, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

(3) In case the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

(4) If the person so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share of an estate, or the independent tenure, or part thereof, the amount so credited shall be added to the amount of the original lien.

India Act XI of 1859, section 8.

Claims against Government held by a defaulter not to invalidate a sale.

19. (1) No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bear or render void or voidable a sale under this Act.

(2) Nor shall the plea that money belonging to the defaulter and sufficient to pay the arrear of revenue due was in the Collector's hands, bar or render void or voidable a sale under this Act; unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter or after the written agreement mentioned in section sixteen, the Collector shall have neglected or refused on insufficient grounds to transfer it in payment of the arrear of revenue due.

Chapter II.

Separate Accounts.

Ditto, section 10.

Separation of shares held in common by the opening of a separate account.

20. (1) When a recorded proprietor of a joint estate or independent tenure held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification of the share held in the estate or independent tenure by the applicant.

Ditto, section 11.

Separation of shares consisting of specific portions of land by the opening of a separate account.

21. (1) When a recorded proprietor of a joint estate or independent tenure, whose share consists of a specific portion of the land of the estate of independent tenure, desires to pay his share of the revenue separately, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account of it.

Bengal Act VII of 1876, section 70.

Separation of shares consisting of interest in specific portion of estate by opening separate accounts.

22. (1) When a recorded proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification in such form as may be prescribed by the Local Government, of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account thereof.

Procedure in opening separate accounts

India Act XI of 1859, part of sections 10 and 11, and Bengal Act VII of 1876, portion of section 70.

23. (1) On the receipt of an application under sections twenty, twenty-one and twenty-two, the Collector shall cause a copy thereof to be published in the manner prescribed for a notification under section ten.

(2) In the event of no objection being urged by any recorded proprietor within six weeks from the date of publication of the application, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

Date of commencement of separate liability.

India Act XI of 1859, part of sections 10 and 11, and Bengal Act VII of 1876, part of section 70

24. The date on which the Collector records his sanction to the opening of a separate account under the last preceding section shall be held to be that from which the separate liabilities of the share of the applicant commence.

No separate account to be opened for incorrect share or for share bearing revenue of less than ten rupees.

Bengal Act VII of 1876, section 69, modified.

25. No separate account shall be opened under section twenty-three in respect of the share of any applicant otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor; nor shall any separate account be opened in respect of any share, the revenue of which is less than ten rupees, or if the revenue of any residuary share which would be formed by the grant of such an application, would be less than ten rupees.

New

If objection be made, parties to be referred to the Civil Court.

India Act XI of 1859, section 12, and Bengal Act VII of 1876, section 74.

26. If on the publication of the applications referred to in section twenty-three, any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object—

(a) that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him; or

(b) (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of an estate) that the amount of revenue stated by the applicant to have been heretofore paid on account of such portion of land or on account of the applicant's undivided interest therein is not the amount which has been recognized by the other sharers as the revenue thereof,

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

Bengal Act VII of 1876, section 72.

Application to close a separate account.

27. Whenever any share in respect of which a separate account has been opened by the Collector under section twenty-three, shall no longer correspond with the character and extent of interest held in the estate by any proprietor, or jointly by two or more proprietors, any recorded proprietor of any interest in the estate for a share of which such separate account is open, may submit to the Collector a written application setting forth the circumstances under which such share no longer corresponds with the character and extent of interest held as aforesaid, and specifying the manner in which such share has been broken up and distributed among the proprietors of the estate, or the manner in which the said character and extent of interest have been changed, and praying that the separate account standing open in respect of such share may be closed; and if he so desire, that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been opened under section 25 for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors C, D and E.

In course of time X has inherited A's 4 annas share, and also C's interest in the 7 annas share which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows :—

X	...	...	...	...	9 annas.
B	...	...	...	...	3 „
D and E		...	...	...	4 „

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share, and also the separate account which is open in respect of B's 5 annas share, as neither of these shares corresponds with the extent of interest held by any one proprietor or held jointly by two or more proprietors in the estate.

X may, in the same application, also apply for the opening of a separate account in respect of the 9 annas share which he now holds. Any of the other proprietors may also make a similar application.

Ditto, section and part of section 74.

Separate account may be closed and another opened.

28. (1) On receipt of the application mentioned in the last preceding section, the Collector shall cause a copy of the same to be published in the manner prescribed for a notification under section ten and, if within six weeks of the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as desired by him under sections twenty, twenty-one and twenty-two, as the case may be.

(2) If any recorded proprietor object that the share in respect of which any separate account is open as aforesaid has not been broken up and does still correspond with the character and extent of interest held by any proprietor or proprietors, the Collector shall proceed as provided by section twenty-six.

New, based on section 28 of Bengal Act VII of 1876.

Collector may close an incorrect separate account *suo motu*.

29. (1) Whenever it shall come to the notice of the Collector that a share for which separate account has been opened under section twenty-three, does not correspond with the character and extent of interest held in the

estate by the proprietor with whom the separate account was opened, the Collector shall issue a notice to the said proprietor informing him of his intention to close the separate account, and requiring him to state in a written application any objection he may have thereto. Such notice shall be served in the manner prescribed for the service of a notice under sections ten and twelve.

(2) If within six weeks from the service of the notice the proprietor shall not make such application, or if the objections made by him are not in the opinion of the Collector good and sufficient, the Collector shall record a proceeding stating his reasons for believing the separate account to be incorrect, and shall order that the separate account be closed, and it shall be closed accordingly.

Act XI of 1859, section 13.

Sale of separate shares.

30. (1) Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector shall, in the first place, put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

(2) In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale notified under section nine.

(3) The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of revenue assigned thereto.

Ditto, section 4.

Entire estate may be sold under certain conditions.

31. (1) If in any case of a sale held according to the provisions of the last preceding section there be no bid, or if the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share with the penalties specified in section fifteen.

(2) If such purchase be completed, the Collector shall give such certificate and delivery of possession as are mentioned in sections fifty-six and fifty-seven to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

(3) If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is notified by section ten of this Act.

Chapter III.—Estates under Court of Wards.

Bengal Act IX of 1879, section 23, as amended by Act II of 1881, section 4, clause (1).

Estate under Court of Wards exempted from sale.

32 Except as hereinafter provided by section thirty-eight, every estate, and, subject to the provisions of section thirty, every share or part of an estate for which a separate

account has been opened under section twenty-three, shall be exempt from sale for arrears of revenue which have accrued whilst such estate, share or part has been under the charge of the Court of Wards in accordance with the provisions of Bengal Act IX of 1879, or any similar Act for the time being in force:

Provided that all such arrears of revenue shall be a first charge upon the sale proceeds of any estate, share or part which may be sold for any other cause than such arrears of revenue.

Bengal Act IX of 1879, section 23, as amended by Act III of 1881, section 4, clause (2).

Recovery of arrears of revenue due when estate ceases to be under charge of Court of Wards.

33. If at the time when such estate, share or part ceases to be under the charge of the Court of Wards an arrear of revenue due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses, and other demands due, and all arrears thereof, managing such estate share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit:

Provided that when such estate, share or part has been attached under this section, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment and shall pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

Bengal Act IX of 1879, section 24.

Estate belonging to minors not to be sold for arrears of revenue.

34. No estate, the sole property of a minor or of two or more minors and descended to him or them by the regular course of inheritance or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

Ditto, ditto.

Collector may attach estate.

35. The Collector may on an arrear accruing on any estate mentioned in the last preceding section, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager, or by farming it as he may think fit for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

Ditto section 25

When exemption from sale applies.

36. The exemption from sale for arrears of revenue referred to in section thirty-four shall only apply to cases in which a written notice of the fact that the estate

is the sole property of one or more minors and entitled to such exemption has been served on the Collector before the sale.

Application of proceeds of farmed estate.

37. (1) When an estate has been farmed under section thirty-five, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the proprietor or to his duly constituted agent, or shall dispose of them in any of the modes mentioned in section forty-nine or section fifty of Bengal Act IX of 1879.

Bengal Act IX of 1879, section 26, adding the last sentence of the proviso to section 4 of Act III of 1881.

(2) Whenever such estate shall be released from attachment, the Collector shall furnish some proprietor or his duly constituted agent with an account of the receipts and expenditure extending over the time when such estate was under attachment.

Conditions under which estate may be sold for arrears accrued under Court.

38. Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in sections thirty-two and thirty-three contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court of Wards, may at any time be sold under the provisions of this Act, if the Court of Wards has certified in writing that the interests of the ward require that such estate, share or part of an estate be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

Section 23 (a) added to Bengal Act IX of 1879 by Act III of 1881, section 4.

Chapter IV.

Attached Estates.

Estates under revenue attachment exempted from sale.

39. No estate, or share or part of an estate held under attachment by the revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

India Act XI of 1859, section 17, penultimate sentence

Explanation—The attachment of an estate, or share or part of an estate, under the provisions of section ten of the Public Demands Recovery Act, 1880, is not an attachment within the meaning of this section, and does not exempt the estate, or share or part of an estate, so attached from sale for arrears of revenue.

New.

Estates under judicial attachment exempted from sale till close of the year.

40. No estate, or share or part of an estate held under attachment or managed by a revenue officer, in pursuance of an order of a judicial authority shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

India Act XI of 1879, section 17, last sentence.

PART IV.

Sales.

Sales where to be held.

41. Sales shall ordinarily be held by the Collector in the Collector's office at the Sadar station of the district.

Ditto, section 19.

Provided that it shall be competent to the Board to prescribe a place for holding sales other than such office whenever they shall consider it beneficial to the parties concerned.

India Act XI of 1859, section 20

Adjournment of sales.

42. In case the Collector shall be unable from sickness, from the occurrence of a holiday or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner and announcing the adjournment by a written notification stuck up in his cutcherry, and so on, from day to day, until he shall be able to commence upon or to complete the sale; but, with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

New.

Procedure at sales.

43. (1) On or before the day of sale notified under section nine, the notifications affixed in the Collector's office under that section, together with the return of publication of notice in the Judge's Court, and the returns of service of all and any notices issued and declarations forwarded under any of the provisions of this Act. shall be laid before the Collector of the district or a Deputy Collector specially empowered by him in this behalf, who shall satisfy himself that all notification and notices previous to sale by this Act required have been duly issued for the period at the places and in the manner by this Act, prescribed.

(2) On being so satisfied, or on receiving a report from the Deputy Collector specially empowered as above that he has so satisfied himself, the Collector of the district shall record an attestation in the form prescribed in the second schedule hereto annexed, that all the requirements of this Act in respect of the publication of notifications and notices purport to have been complied with and such attestation shall be kept with, and form part of, the record of sale proceedings.

(3) If the Collector be not satisfied that the prescribed notifications and notices have been duly issued and served in respect to any estate notified for sale under section nine, he shall postpone the sale and issue fresh notifications and notices for the period at the places and in the manner by this Act prescribed.

India Act XI of 1859, section 21

Order of selling.

44. Upon completion of the attestation mentioned in the last preceding section, the sales shall proceed in regular order; the estate or share of and estate, or independent tenure, to be sold bearing the lowest number on the revenue-roll of the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector to put up any estate or share of an estate, or independent tenure, out of its regular order by number, except where it may be necessary to do so on default of deposit, as mentioned in the next succeeding section.

Ditto section 22.

Deposit on account of purchase-money.

45. The person who shall be declared the purchaser of an estate or share of an estate, or independent tenure, at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of

the estate or share of an estate, or independent tenure, as the Collector may think necessary, either in cash, currency notes or Government securities to be valued at the market rate of the day, duly endorsed, twenty-five per cent. on the amount of his bid; and in default of such deposit, the estate or share of an estate shall forthwith be put up again and sold.

Indian Act XI of 1589, section 21.

Full payment of purchase-money.

46. (1) The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate, or independent tenure, bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth.

(2) On default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share of an estate, or independent tenure, shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share of an estate, or independent tenure, or to any part of the sum for which it may subsequently be sold.

(3) In the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the Collector shall proceed to levy the difference from him under the provisions of the Public Demands Recovery Act, 1880, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner prescribed under section fifty-nine, for the disposal thereof.

Ditto, section. 21.

Resale.

47 (1) When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section nine, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred.

(2) If the payment, or tender of payment, of the arrear on account of which the estate or share of an estate, or independent tenure, was first sold, and of any arrear which may have subsequently become due, and of the amounts and the additional sum specified in section fifteen, shall be made by or on behalf of the proprietor of the estate or share of an estate, or independent tenure, before sunset of the third day, the issue of the notification of re-sale shall be stayed.

Ditto Ditto

Method of calculating amount to be recovered from bidders when default has occurred more than once.

48. (1) If default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized:

(2) The rules contained in sections forty-five and forty-six shall be applicable to every such re-sale.

49. Any person interested in any estate or share of an estate, or an independent tenure, sold for arrears of revenue or injuriously affected by such sale may, within thirty days of the date of the sale, apply to the Collector to annul the sale; and if it appear to the Collector that material irregularity has occurred in the service of any of the notifications or notices referred to in section forty-three, and that substantial injury has been caused thereby, he shall annul the sale or issue such order authorized by law as the justice of the case may require.

Application to Collector against sales.

New.

50. (1) If the Collector by an order issued under the last preceding section refuse to annul the sale the applicant may within thirty days from the date of such order appeal to the Commissioner.

Appeal to Commissioner against sales.

(2) The Commissioner shall hear such appeal, and if he be satisfied that substantial injury has been caused by such sale, he may annul the same.

(3) The decision of the Commissioner upon any appeal made under this section shall be final.

India Act XI of 1859, section 25.

51. When a sale has been annulled under section forty-nine or fifty and the annulment has been publicly notified under section fifty-four, the Collector shall issue sale notifications under section nine and sale notices under section ten, and shall proceed to sell the estate again on the next regular sale day. The provisions of sections fourteen and fifteen shall apply as far as may be to such resales.

Resale of estate.

51A. Any person interested in any estate or share of an estate or independent tenure sold for arrears of revenue or injuriously affected by such sale may within thirty days of the date of the sale represent the case to the Board of Revenue, who, if they are satisfied that hardship or injustice has been caused by such sale, may annul it and may cause the estate, share of an estate, or independent tenure to be restored to the proprietor on such condition as may appear equitable and proper.

Annulment of sale by Board of Revenue.

New.

52. (1) Notwithstanding anything hereinbefore contained, the recorded proprietor of an estate, or share of an estate, or an independent tenure sold for arrears of revenue may—

Recorded proprietor empowered to redeem estate, &c., under certain specified conditions.

(*a*) if no application is made to the Collector to annul the sale under section forty-nine within thirty days of the day of sale; or

(*b*) if such application be made and no appeal be preferred to the Commissioner against the order of the Collector under section fifty within thirty days of the date of such order; or

(*c*) if an appeal be preferred to the Commissioner under section fifty within thirty days from the date of the order dismissing the appeal,

apply to the Collector to annul the sale on his depositing in the office of the Collector—

(*d*) the arrears of revenue on account of which the estate, share of an estate, or the independent tenure, was first sold, and of any arrears which may have become subsequently due, and all outstanding charges payable to the Col-

lector in the respect of the estate, share of an estate or independent tenure under any Act for the time being in force, together with the additional penalties specified in section fifteen, and the interest on the whole amount calculated at six and a quarter per centum per annum from the day of sale to the date when the deposit under this section is made;

(*e*) a sum equal to ten per centum of the purchase money;

(*f*) a sum equal to four per centum of the purchase-money.

(2) If such deposit is made within thirty days of the date of the application, the Collector shall make an order annulling the sale.

(3) If the recorded proprietor fail to make the deposit within the period hereinbefore prescribed, the Collector shall forthwith make an order dismissing the application, and the sale in respect of which such application was made shall become final and conclusive at noon of the day on which such order was made if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(4) The order of the Collector upon an application made under this section shall be final.

New.

Civil Court debarred from entertaining suit for annulling sale for arrears of revenue.

53. From and after the date on which this Act shall come into force no Civil Court shall entertain a suit for annulling the sale of an estate, share of an estate, or an independent tenure, sold for arrears of revenue.

India Act XI of 1859, section 32

Notification of annulment of sale.

54. The annulment of a sale made under sections forty-nine, fifty, fifty-one, or fifty-two of this Act shall be publicly notified by the Collector in the same manner as the becoming final and conclusive of sales is required to be notified by section fifty-six, and the amount of purchase-money shall be forthwith returned to the purchaser with interest at four per centum and with a sum equal to ten per centum thereof, both of which shall be paid by the Government, unless the proprietor shall have become liable for or have deposited these sums under the provisions of section fifty-two.

Ditto section 27—modified.

Sales when final.

55. (1) Subject to any application made to annul a sale under section fifty-two, all sales of which the purchase-money has been paid up under section forty-six, and in respect of which no application to annul the same has been made within the period for such applications under section forty-nine, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(2) Sales in respect of which an application to annul the same has been made under section forty-nine and no appeal has been preferred to the Commissioner against the order of the Collector under section fifty shall, subject as aforesaid, be final and conclusive at noon on the thirty-first day from the date of the order if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

(3) Sales against which an appeal may have been preferred and dismissed by the Commissioner

shall, subject as aforesaid, be final and conclusive at noon on the fifteenth day from the date of the order dismissing the appeal, if more than sixty days from the day of sale, or if less, than at noon of the sixtieth day as above provided.

Illustration.—If the sale takes place on the 15th of April, it will, unless affected by the conditions prescribed under this section, become final and conclusive at noon of the 13th of June.

India Act XI of 1859, section 28.

Certificate of sales.

56. (1) Immediately upon a sale becoming final and conclusive, the purchaser shall be entitled on application to the Collector and on payment of the stamp duty required by law, or on proof that it has been paid, to receive a certificate of title in the form prescribed in the third schedule hereto annexed, and the certificate after registration under Act III of 1877, or any other law for the time being in force for the registration of documents, shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate, or independent tenure sold, being vested in the persons named from the date specified therein.

(2) On such certificate being granted, the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Munsifs and police stations within whose jurisdictions any part of the estate or share of the estate, or independent tenure sold shall be situated.

Ditto, section 29

Delivery of possession.

57. (1) When a certeficate of title has been granted under the last preceding section, the Collector shall order delivery of possession of the estate or share of an estate, or independent tenure, purchased, to be made by proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the ownership of the estate has been transferred from the former proprietor or proprietors to the purchaser, and by affixing a copy of the certificate at the *mal* cutcherry or in some conspicuous place on the estate or share of an estate, or the independent tenure, purchased; and, if need be, by removing any person who refuses to vacate the same.

(2) It shall not be necessary for the Collector to order delivery of possession to be made in any other way than is provided in this section.

Bengal Act VII of 1868, section 8—modified and enlarged.

Certificate to be conclusive evidence of regularity in procedure.

58. (8) With every certificate of title which may be given to any purchaser under section fifty six there shall also be delivered to him free of cost a certified copy of the attestation made under section forty-three, and such certificate and attestation shall be conclusive evidence in favour of such purchaser and of every person claiming under him, that all notifications and notices in or by this Act, required to be served or posted, have been duly served and posted, for the period, at the places and in the manner by this Act required, and that the sale to which they refer was a sale under this Act.

(2) The title of any person, who may have obtained any such certificate and attestation shall not be impeached or affected by reason of any omission, informality or irregularity as regards the serving or posting of any notification or notice

in the proceedings of the sale at which such person may have purchased.

59. (1) The Collector shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment from the estate, or share of an estate, or independent tenure, sold, with interest calculated at six and-a-quarter per centum, and, secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate, or the independent tenure, in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate, or share of an estate, or the independent tenure, sold, or their heirs or representatives to be immediately payable to his or their receipt in the manner following, to wit, in shares proportioned to their recorded interest in the estate, or share of an estate, or the independent tenure, sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

Disposal of purchase-money

India Act XI of 1159, 31—slightly altered

(2) If before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietors or proprietors except under precept of a Civil Court:

Provided that the residue, if any, of the purchase-money of an independent tenure shall be held in deposit on account of the late holder of the tenure, and not on account of the proprietor or proprietors of the estate.

Bengal Act VII of 1868, section 11.

60. When any application for payment of the residue of the purchase-money of an estate, share of an estate, or the independent tenure, shall be made to the Collector under the last preceding section by any person other than the late recorded proprietor or proprietors, the Collector may, if shall think fit, cause a notification to be published in the manner prescribed by section eight, requiring all persons who object to the payment of the said residue to the applicant to appear before the Collector on a day to be specified in such notification, not being less than thirty days from the date of publication thereof, and to present a written statement of their objections, and on the day specified he shall refer the parties to the Civil Court:

Procedure on application by other than late proprietor.

New

Provided that no person who shall fail to present his objection to the Collector as prescribed in this section shall be entitled at any future time to claim payment of the said residue from the Collector.

61 Any Collector conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector, shall carry his sentence into effect:

Punishment for contempt.

India Act XI of 1859, section 56

Provided that an appeal from any order passed under this section shall lie to the Commissioner, whose decision shall be final.

India Act XI of 1859, section 57

Default in making deposit to be considered a contempt.

62. A default to make good a bid by making the deposit required by section forty-five of this Act shall be held to be a contempt.

Ditto, section 58

Power of Government to purchase at a sale.

63. (1) When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon,

(*a*) if there be no bid, the Collector shall purchase the estate on account of Government for a sum not exceeding one rupee; or

(*b*) if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector may take or purchase the estate on account of the Government at the highest amount bid.

(2) Whenever the Collector shall purchase an estate under clause (*a*) or (*b*) of this section, he shall be entitled to realize, under the Public Demands Recovery Act, 1880, any arrears of revenue or other demands still due from the defaulting proprietor and not covered by the sum paid for the estate or share of an estate, or the independent tenure, and in all cases the Government shall acquire the property subject to the provisions of this Act.

PART V.

Rights and Liabilities of Purchasers.

India Act XI of 1859, section 30, modified and added to.

Liability and rights of purchaser.

64. The person who shall under section forty-five, or in the event of a resale under section forty-seven, be declared the purchaser of an estate or share of an estate, or an independent tenure, shall be answerable for all instalments of revenue, and shall be entitled to collect rents from all persons liable to pay the same which may fall due after the latest day of payment of the arrears in respect of which the estate, share of an estate, or the independent tenure, was sold.

Ditto, section 37.

Rights of a purchaser of a permanently-settled estate sold for its own arrears.

65. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar and Orissa, sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures and forthwith to eject all tenure-holders, with the following exceptions:—

(*a*) istamrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement:

(*b*) tenures existing at the time of settlement, which have not been held at a fixed rent:

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures:

(*c*) tenures created since the time of settlement, and farms for terms of years when such tenures and farms have been duly registered under the provisions of this Act:

(*d*) leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

Bengal Act VII of 1868, section 12.

Rights of purchaser of independent tenure.

66. The purchaser of an independent tenure sold under the provisions of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all tenures, and forthwith to eject all tenure-holders, with the following exceptions:—

(*a*) the classes specified in clauses (*a*), (*b*) and (*d*) of the last preceding section:

(*b*) tenures created or recognized by the settlement proceedings of any current temporary settlement as tenures bearing a rent which is fixed for the period of such settlement.

Bengal Act VII of 1868, sections 13 and 14

Purchaser's right of enhancement.

67. Such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the class of exceptions described in clause (*d*) of section sixty-five if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise:

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat, having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

India Act XI of 1859, section 52.

Rights of a purchaser of an estate not permanently settled, sold for its own arrears.

68. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, except leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds, have been made, or whreein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the tipulated rent paid, continue in force and effect:

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mauza, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

India Act XI of 1859, section 53.

Rights of a purchaser being a sharer in any estate.

69. Excepting proprietors with whom the Collector, under section twenty-three, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for the arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

India Act XI of 1859, section 54—modified.

Rights of purchasers of shares of estate.

70. When a share or shares of an estate may be sold under the provisions of section thirty or thirty-one, whether the share or shares so sold be those for which a separate account has been opened, or the remaining portion of the estate for which no separate account has been opened, the purchaser shall acquire the share or shares subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Ditto, section 55.

Recovery of arrears due to defaulters.

71. Arrears of rent which on the latest day of payment may be due to the defaulter from all persons liable to pay the same, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

PART VI.

Protection of Tenures.

Ditto, section 38.

Registration of tenures.

72. The following rules for the registration of tenures and of farms for terms of years shall be observed:—

there shall be two sets of registers—one for common registry and one for special registry:

common registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government:

special registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

73. (1) The holder of any tenure desirous of registering it shall apply by petition to the Collector of the district to whom the estate belongs. India Act XI of 1859, section 39.

Application for registry.

(2) The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

(*a*) the pargana or parganas in which the tenure is situated;

(*b*) the nature of the tenure and the name and revenue roll-number of the *mahal* in which it is situated;

(*c*) the name or names of the village or villages whereof the land is composed or wherein it is situated;

(*d*) the area of the land comprised in the tenure, with its boundaries in complete detail;

(*e*) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, is any, required to be performed on account of it;

(*f*) the date of the deed constituting the tenure, or, where no such deed exists, a statement of the evidence on which the applicant relies for proving that he and his predecessors in title (if any) have been in possession of the tenure for twelve years preceding the date of the application; New

(*g*) the name of the proprietor who created the tenure;

(*h*) the name of the original holder of the tenure;

(*i*) the name of the present possessor, and, if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

(3) The deeds or other evidence referred to in clause (*f*) of this section shall be submitted with the application for the consideration of the Collector. New.

(4) Holders of such farms as are described in section seventy-two may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

74. (1) When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the *mal* cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any person interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application. India Act XI of 1859, section 41.

Procedure on application for common registry.

(2) If within the limited time no objection is made, the Collector shall consider the deeds of other evidence produced by the applicant, and if

he shall, on summary enquiry or on consideration of such evidence as he may cause to be adduced, be satisfied of their genuineness and sufficiency, he shall register the tenure or farm.

(3) If within the limited time an objection is made by any recorded proprietor, or by any person interested, not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application.

(4) If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

India Act XI of 1859 section 4.

Procedure on application for special registry.

75. (1) When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.

(2) If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

(3) If within the limited time an objection is made by any recorded proprietor, or by any person interested, not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient, the Collector shall suspend proceedings and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

(4) If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Ditto, section 43.

Registration of leases of certain lands.

76. Leases of lands of the description mentioned in clause (*d*) of section sixty-five, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of tenures.

Ditto, section 44

Registration of old tenures.

77. (1) Tenures of the classes described in clauses (*a*) and (*b*) of section sixty-five, may be registered at the option of the holders, and when so registered shall be entered only in the special register.

(2) Application for such registry shall contain the particulars specified in section seventy-three, so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section seventy-four.

(3) If within the limited time no objection is made by any recorded proprietor or by any person interested, not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy himself as to the validity of the tenure, and, if so satisfied, he shall report the case to the Commissioner, who shall act according to the provisions of section seventy-five, and the provisions of the said section thall be applicable to cases in which objections shall be made:

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of tenures of the description herein referred to.

Registration of rent-free tenures in estates under partition.

78. On receiving from the Deputy Collector appointed under Bengal Act VIII of 1876 a notice in accordance with section ninety-six of that Act, to the effect that a rent-free tenure has been created in an estate under partition, the Collector shall, under section seventy-five, report the case to the Commissioner who, if satisfied that the revenue of the parent estate is sufficiently secured, shall direct the tenure to be specially registered.

Bengal Act VIII of 1876, section 96.

Expenses of measurement, survey, or local enquiry.

79. The actual expenses of any measurement, survey or local enquiry made under sections seventy-five and seventy-seven shall be borne by the person who applies for the registry of his tenure or farm, and may be realized under the provisions of the Public Demands Recovery Act, 1880; and such person may be required by the Collector from time to time to make such payments on this account as he may consider necessary.

India Act XI of 1859, section 46.

Effect of entry in the special register.

80. (1) Entry in the special register shall be an effectual protection of the tenure or farm so registered unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue:

Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud.

(2) The tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

Ditto, section 50.

Protection of tenures pending enquiry in case of sale of parent estate for arrears of revenue.

81. Tenures and farms described in clause (*c*) of section sixty-five, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section seventy-five, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the revenue authorities upon such application be in favour of the claimant.

Ditto, section 51.

New

Period within which applications may be made.

82. Applications for common or special registry or for registration under this Part may be made at any time on payment of the fee prescribed in the fourth schedule hereto annexed:

Provided that the deed or deeds constituting or creating the tenture for registry or registration of which application is made shall have been duly registered within the period, in the manner and at the place prescribed by the Indian Registration Act, 1877.

PART VII.

Miscellaneous Provisions.

India Act XI of 1859, section 49, modified.

Order of Commissioner under Part VI open to revision within one year.

83. The order of a Commissioner for the special registry of a tenure under the provisions of Part VI of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the Local Government, on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

Ditto, section 48

Suit for cancelment of registry of a tenure or farm.

84. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

New
Vide Bengal Act VII of 1880, section 15

Collector may refer certain cases to his subordinates.

85. (1) The Collector may refer to any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him any application under sections twenty, twenty-one, twenty-two or twenty-seven, any case arising under section twenty-nine, any application under section sixty; and any application for common registry under section seventy-two, and such officer as aforesaid shall hear and determine such application or case accordingly.

(2) The provisions of this Act shall apply to any such officer hearing or determining such applications and cases.

(3) All orders passed by any officer subordinate to a Collector shall be appealable to the Collector within fifteen days; all orders passed by a Collector shall, subject to the provisions of this Act, be appealable to the Commissioner within thirty days, and all orders passed by a Commissioner shall, subject to the provisions of this Act, be appealable to the Board within sixty days, after the passing of such orders respectively.

New

Powers for taking evidence.

86. The Commissioner, the Collector, and every officer to whom any application or case may be referred by the Collector under the last proceding section, shall have the powers conferred on Civil Courts by the Code of Civil Procedure for compelling the attendance of witnesses and the production of evidence, and for examining witnesses in any appeal or enquiry which he may be empowered to make or entertain under the provisions of this Act.

Fees leviable under certain sections.

87. The Collector on the part of Government shall demand from applicants under the sections mentioned in the first column of the fourth schedule hereto annexed, the fees specified in the third column thereof, which schedule shall be taken as part of this Act, and applications under the said sections shall not be received unless the said fees are tendered therewith.

Bengal Act III of 1862, section 3.

Regulations to be in force in certain estates.

88. The provisions of Regulation VII of 1822 and Regulation IX of 1825, shall be in force in every estate, in any part of which a measurement, survey or local enquiry may be made under this Act: and in every estate purchased or taken on account of Government under this Act.

India Act XI of 1859 section 60

THE FIRST SCHEDULE.

(REFERRED TO IN SECTION 2.)

Regulations of the Bengal Code).

Number and year.	Subject.	Extent of repeal.
1	2	3
V of 1812 ...	A regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 24 and 25.
XI of 1822 ...	A regulation for modifying and explaining the existing regulations relative to the sale of land for the recovery of arrears of revenue, &c.	Section 36.

Acts of the Governor-General of India in Council.

XII of 1841 ...	An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.	Section 2.
XII of 1859 ...	An Act to improve the law relating to sales of and, &c.	The whole Act.

Acts of the Lieutenant-Governor of Bengal in Council.

III of 1863 ...	An Act to amend Act XI of 1859 ...	The whole Act.
VII of 1863 ...	An Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue.	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14.
II of 1871 ...	An Act to amend the procedure for the recovery of arrears of land revenue in respect of tenures not bring estates.	The whole Act.
VII of 1876 ...	An Act to provide for the registration of revenue-paying and revenue-free lands, &c.	Sections 69, 70, 71, 72, 73, and 74.
X of 1879 ...	An Act to amend the law relating to the Court of Wards.	Sections 23, 24, 25, and 26.
III of 1881 ...	An Act to amend the Court of Wards' Act, 1879.	Sections 2 and 4.

THE SECOND SCHEDULE.

(REFERRED TO IN SECTION 43.)

Form of Attestation.

I hereby attest that all notifications, notices and proclamations required by sections in the case of the sale of estate, tauzi No. (or share of estate, tauzi No.)for an arrear of revenue are reported by the Collector's establishment to have been duly issued and purport to have been duly posted and served.

A. B.

Collector of

THE THIRD SCHEDULE.

(REFERRED TO IN SECTION 56.)

Certificate.

I certify that A. B. has purchased under Act No. the estate (*or share of an estate, or independent tenure*) specified below standing in the tauzi of the district of and that his purchase took effect on the day of (*being the day after that fixed for last day of payment.*)

(Signed)

Collector.

SPECIFICATION.

(*if of an entire estate.*)

Tauzi number
Name of estate
Name of the former proprietor
Revenue

(*if of a share of an estate.*)

Tauzi number of the entire estate
Name of the entire estate
Revenue of the entire estate
Description of the share sold
Subordinate tauzi number of the share sold
Name of the former proprietor of the share sold
Revenue for which the share sold is separately liable

(*if of an independent tenure.*)

Tauzi number or numbers on Collector's register
Name of the tenure
Revenue
Name of the former tenure-holder

THE FOURTH SCHEDULE.

(REFERRED TO IN SECTIONS 11 AND 82.)

Fees.

Section.	Nature of application.	Fees payable.
1	2	3
(1) 14	For registering an address to which notice of default may be sent.	Two rupees yearly.
(2) 15	For deposit of money or securities to protect estate from sale.	Half per cent. on the amount deposited. (Subject to a maximum of one rupee.)
(3) 15	For interest on securities so deposited drawn by the Collector.	Half per cent. on the amount drawn. (Subject to a maximum of one rupee.)
(4) 5	For withdrawal of a deposit so made.	Half per cent. on the amount withdrawn. (Subject to a maximum of one rupee.)
(5) 17	For deposit for protection of estate by non-proprietor.	Half per cent. on the amount deposited. (Subject to a maximum of one rupee.)
(6) 20, 21 or 22.	For opening separate account in respect of a share in an estate.	If the revenue of the applicant's share of the estate do not exceed Rs. 1,000—at the rate of ten per cent. upon the revenue. If the revenue of the applicant's share of the estate exceed Rs. 1,000—at the rate of ten per cent. on Rs. 1,000 and two per cent. on all above that amount.
(7) 66, 69 or 70.	For registry of tenures.	Two rupees on each application.

No. $\frac{2329}{204}$, dated Simla, the 20th September 1893.

From—Sir E. C. Buck, Kt., c.s.i., Secretary to the Government of India, Revenue and Agricultural Department,

To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your letter No. 2299, dated 29th May 1893, with which you submitted the drafts of two Bills to amend the law in Bengal regarding revenue sales and recovery of public demands, and with especial reference to your last paragraph, in which the enquiry is made whether the Bills should be introduced in the Bengal or Supreme Legislative Council, I am directed to say that the Government of India are of opinion that the proposed legislation should be undertaken by the Local Government. It requires to be dealt with by exports familiar with the local revenue law and practice, and able to appreciate all the bearings of the various points raised: it is only in the Bengal Council that more than one or two such experts are likely to be available.

2. In view of their opinion that the Local Government should deal with the Bills, the Government of India have not attentively examined the details of the proposed measures. It is sufficient to state that, as at present advised, they have no objections to find with the main principles embodied in them. I am, however, to point out that the 53rd Section of the Draft Bill for the amendment of the Revenue Sale Law, as it stands, is open to the objection that it affects to debar the High Court from entertaining any suit such as might now be brought before it to set aside the sale of an estate sold for arrears of revenue; but this objection is purely technical, and can be met by the substitution of a provision to the effect that, save as provided in the Act, every sale made shall be final and irrevocable.

3. The propriety of inserting such a provision as is contemplated by section 52 of the Draft Revenue Sales Bill and section 20 of the Draft Public Demands Recovery Bill, regarding the redemption of property after sale, will depend to some extent on the decision at which the Imperial Legislature may arrive with regard to the similar proposal which has been made in the Bill (No. 7 of 1893) for the amendment of the Code of Civil Procedure and the Indian Limitation Act. It will be noted that if the Bill just quoted becomes law in its present form, the proprietor will not be allowed both to apply for the annulment of sale on account of an alleged irregularity, and also, on failure of such application, to redeem the property sold.

No. 1271T.R.

Copy, with copy of the letter to which this is a reply, and of its enclosures, forwarded to the Legislative Department of this Government for information. The nomination of the Member of the Council who is to have charge of the Bills will be made by Sir Charles Elliott on his return from leave.

By order of the Lieutenant-Governor of Bengal,

M. FINUCANE,

Offg. Secretary to the Govt. of Bengal.

Calcutta,

The 14th October 1893.

No. $\frac{276}{56}$, dated Calcutta, the 27th January 1894.

From—Sir E. C. Buck, Kt., c.s.i., Secretary to the Government of India, Revenue and Agricultural Department,

To—The Secretary to the Government of Bengal, Revenue Department.

In continuation of my letter No. $\frac{2329}{204}$, dated 20th September 1893, I am directed to state that the attention of the Government of India has been drawn to certain points connected with the Draft Revenue Sale Law submitted with Mr. Risley's letter No. 2299 of 29th May 1893. His Excellency the Governor-General in Council is not prepared at present to communicate any definite conclusions on these subjects which are briefly noted below, but while they are under consideration, requests that the introduction of the Bill may be deferred.

A further communication on the questions raised will be made as early as possible.

2. The effect of sections 5 and 6 of the Draft Bill as they stand will, it appears, be to exempt the zamindars from the liability, under which they have stood since the Permanent Settlement, to pay the revenue monthly if required so to do. There is no objection to the Government, as a matter of convenience, fixing a latest date for payment subsequent to the dates on which the instalments fall due, and this has been the custom in Bengal. The question presents itself whether any such arrangement should be made as otherwise than of grace, and whether the right to demand payment at the precise date on which, under the contract of the Permanent Settlement, the revenue falls due should in any way be annulled or obscured by legislation.

3. Another question which may require further consideration is whether it is advisable to introduce any change in the law regarding the power of a defaulter to release his estate by payment after the "latest date," and whether the Collector should not, as at present, retain the power to accept payment, on good reason shown, up to the day before the sale day without being compelled, as he would be by section 15 of the Draft Bill, to accept it. The fact that under section 52 of the Draft Bill the defaulter will have the right under certain conditions to redeem the estate after sale may render it less advisable to grant him a similar concession previous to sale.

No. $\frac{547}{56}$, dated Calcutta, the 22nd February 1894.

From—Sir E. C. Buck, Kt., c.s.i., Secretary to the Government of India, Revenue and Agricultural Department,

To—The Secretary to the Government of Bengal, Revenue Department.

In paragraph 1 of my letter No. $\frac{276}{56}$, dated the 27th January 1894, on the subject of the Draft Revenue Sale Law submitted with Mr. Risley's letter of the 29th May 1893, you were informed that a further communication would shortly be made on the question under consideration.

2. I am now directed to inform you that the Government of India have on consideration found it unnecessary to make any further recommendation to the Government of Bengal than that contained in paragraph 2 of my letter above referred to. His Excellency in Council thinks it inadvisable that in the Bill the principle of section 2, Act XI of 1859, should be in any way infringed: and I am therefore to suggest that section 5 of the Bill may be accordingly modified. The simplest way would appear to be to substitute section 2, Act XI of 1859 for section 5 of the Bill as it stands.

3. I am to request that this Government may be favoured for information with a copy of the Draft Revenue Sale and Public Demands Recovery Bills, when these have been revised for presentation in the Provincial Legislative Council.

No. 1382, dated Calcutta, the 7th March 1894.

From—C. E. Buckland, Esq., Secy. to the Govt. of Bengal, Revenue Department,

To—The Secretary to the Government of India, Revenue and Agricultural Dept.

I am directed by the Lieutenant-Governor to acknowledge the receipt of your letters No. $\frac{276}{56}$, dated the 27th January, and No. $\frac{547}{56}$, dated the 22nd February 1894, on the subject of certain sections of the draft Revenue Sale Law submitted with the letter from this office, No. 2209L.R., dated the 29th May 1893, and to reply as follows.

2. It is stated in the second paragraph of your earlier letter under reply that the effect of sections 5 and 6 of the Draft Bill (previously submitted) as drafted will, it appears, be to exempt the zamindars from the liability under which they have stood from the Permanent Settlement to pay the revenue monthly if required to do so. In reply, I am to invite the attention of the Government of India to the words "due under the settlement," as showing that the instalments of revenue fixed by the settlement are not affected by the Bill. I am also to represent that under section 5 it was proposed to give power to the Local Government to fix latest days, which may be as many as 12, for

the payment of instalments of revenue, default in which payment will constitute an arrear of revenue: and under section 6 it will similarly be open to the Local Government to fix as many as 12 latest days of payment of an arrear of revenue, default in which payment will render an estate liable to sale. Government does not possess, under Act XI of 1859, any greater power than these sections will give it. It is not at present open to Government, on the occurrence of an arrear of revenue, to issue process at once for its recovery without reference to any other fact: process can only issue now, when arrears are unpaid, after the latest days of payment as fixed under section 3 of Act XI of 1859: and these latest days of payment have been fixed at four dates in the year for many years past. It is not only by custom, but in accordance with the section of the law last quoted, that latest days of payment have been fixed. It was not proposed to make any arrangement whereby further grace is to be accorded to payers of the land revenue. Such right as Government has to demand payment at the precise date the revenue falls due, *i.e.*, when an arrear accrues, was not affected by the proposed legislation. In practice payment has for nearly 50 years been enforced quarterly, and it was intended to continue this practice, though it might be enforced monthly by the powers taken in the Bill.

3. The Lieutenant-Governor's intention, in drafting section 5 of the Bill as previously submitted, was merely to simplify the appearance of the procedure. Under Act XI of 1859 there are the monthly dates when arrears of revenue accrue, and there are the latest days fixed for the payment of arrears, which in practice are (for the most part) quarterly. His object was to make the days when arrears accrue identical with the latest days of payment. He had no intention of giving any loophole to the zamindars to postpone the actual payment of the revenue, and, as has been shown, it would have been possible, by the fixture of 12 latest days of payment, to have insisted on monthly payments of land revenue, which would have been much more frequent than has been insisted on hitherto. However, having submitted this explanation to show that His Honour was not unmindful of the financial interests of Government, I am to say that the Lieutenant-Governor, in deference to the wishes of the Government of India as expressed in your letter of the 22nd February, has caused section 2 of Act XI of 1859 to be restored to the draft Bill to amend and consolidate the Land Revenue Sale law.

4. With regard to the observations made in paragraph 3 of your letter of the 27th January on section 15 of the draft Bill, I am to point out that a Collector has at present power to accept payment of arrears of revenue, not only up to the day before the sale day, but by section XVIII of Act XI of 1859 he can exempt from sale "at any time before the sale." It has been ruled in fact by the Board of Revenue that a Collector may accept payment of arrears until the hammer is down at the sale. The practical objection to this procedure is twofold: on the one hand the discretion given to Collectors is exercised in a different spirit in different districts, or by successive Collectors in the same district, so that the landlords do not know what degree of leniency they may expect; and on the other hand the Commissioner and the Board may take different views at different times of the amount of hardship involved, and one sale may be annulled on this ground while another holds good. The Government of India's objection to section 15 is, it is understood, that a Collector will be compelled under it to accept payment of arrears. I am to observe that both this section and section 14 have been deliberately drafted with great care for particular purposes, viz., (1) to take away from Collectors the discretionary power which they at present possess of exempting defaulting estates at any time before the sale, and (2) by penalizing and doubly penalizing later payments, to make the zamindars pay their revenue by the fixed quarterly kist days, or else to recoup Government for the loss to the treasury caused by their delay. The penalties have been fixed at amounts which, it is believed, will be effective. By the words "but not otherwise" in each of sections 14 and 15, a Collector's discretion is to be absolutely excluded. The procedure is to be stereotyped by the law. With these explanations I am to submit that the draft sections 14 and 15 may properly be included in the Bill.

5. Under section 54 of the draft Bill now submitted, it is proposed to give a defaulting proprietor the right, under certain conditions, of redeeming his estate

when sold for arrears of revenue. This section has been introduced at the instance of the High Court. The object of Government is in the first instance to prevent estates going to sale at all; in the second, if an estate has been sold without its proprietors' knowledge or for an absurdly small sum, then to allow redemption. For this reason the penalties under section 54 are to be heavier than those under section 15, viz, by the addition of those specified in section 54(1)(*e*) and (*f*). In other words, the Bill graduates the conditions on which a defaulter can save his estate at various stages.

6. The Lieutenant-Governor desires me now to lay before the Government of India a copy of each of the Bills (with Statements of Objects and Reasons attached) to amend the Revenue Sale Law and the Public Demands Recovery Act, as finally revised for presentation to the Bengal Legislative Council. He proposes to have them introduced at an early meeting of the Council, and circulated for opinion before they are actively proceeded with next cold weather.

DRAFT

OF A

Bill to amend the Revenue Sale Law.

(Enclosure to Bengal Government's letter No. 1382, dated 7th March 1894)

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THE FIRST SCHEDULE.—Repeal of Regulations of the Bengal Code, Acts, &c.

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THE THIRD SCHEDULE.—Certificate; Specification.

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DRAFT

OF A

BILL

To amend the Revenue Sale Law.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the sale of land for arrears of revenue and other demands realizable as arrears of revenue in the territories administered by the Lieutenant-Governor of Bengal; It is enacted as follows:—

PART I.

Preliminary.

New.

Title, extent, and commencement.

1. (*1*) This Act may be called the Revenue Sale Act, 189 .

(*2*) It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal, except the town of Calcutta and the scheduled districts other than the Sonthal Parganas, Western Jalpaiguri, the Western Duars, the districts of Darjeeling, Hazaribagh, Lohardaga, Manbhum, the pargana of Dhalbhum and the Kolhan in the district of Singhbhum.

(*3*) It shall come into force on such date as the Local Government, with the previous sanction of the Governor-General in Council, may, by a notification in the Calcutta Gazette, direct.

New.

Repeal.

2. (*1*) On the commencement of this Act, the Regulations and Acts mentioned in the first schedule hereto annexed are hereby repealed to the extent specified in the third column thereof; save so far as regards the trial of any suits that shall be pending at the time of the said commencement.

(*2*) This repeal shall not revive any office, authority or thing abolished by such enactments, nor affect the validity of anything done or suffered, or any right, title, liability or obligation accrued before the commencement of this Act.

(*3*) All rules prescribed, appointments made, powers conferred and notifications published under any such enactments shall, so far as may be, be deemed to be respectively prescribed, made, conferred and published under this Act.

(*4*) Any enactments or documents referring to any enactments hereby repealed shall be construed to refer to this Act or the corresponding portion thereof.

(*5*) The trial of any suit which shall be pending at the time of the commencement of this Act shall proceed and be completed as if this Act had not been passed.

Bengal Act VII of 1868, section 1, with additions from the Bengal Tenancy Act, VIII of 1885.

Definitions

3. In this Act, unless there be something repugnant in the subject or context,—

(1) "Board" means the Board of Revenue for the Lower Provinces of Bengal:

(2) "Collector" means the Collector of a district or a Deputy Commissioner of a non-regulation district, and includes any officer invested by the Local Government with the powers of a Collector under this Act:

(3) "Commissioner" means the Commissioner or an Additional Commissioner of Revenue of a division:

(4) "estate" means any land or share in land subject to the payment to Government of land revenue, and included under one entry in the general register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force; or in respect of which a separate account may, in pursuance of section twenty-three of this Act, have been opened:

(5) "incumbrance" means a charge upon, or a claim against, land arising out of a private contract:

(6) "jurisdiction" of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers:

(7) "official year" means the year commencing on the first day of April:

(8) "proprietor" means a person owning, whether in trust or for his own benefit, an estate, or a part or share of an estate, and includes any person by whom any estate or independent tenure is held directly under Government:

(9) "recorded proprietor" means any proprietor of an estate or share of an estate whose name, and the character and extent of whose interest in the estate, are registered in the general register of revenue-paying lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876, or any similar law for the time being in force:

(10) "revenue" is the sum payable annually to Government by the proprietor of an estate or independent tenure in respect thereof:

(11) "section" means a section of this Act

(12) "tenure" includes all interests in land, whether rent-paying or lakhiraj (other than estates as above defined); and all fisheries, which by the terms of the grants creating the same or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been especially reserved by stipulation in any instrument:

(13) "independent tenure" means a tenure, the revenue of which is payable to Government.

Bengal Act VII of 1868, section 16.

Collectorate to include all estates borne on its roll.

4. Every estate shall, for the purposes of this Act, be deemed to be within the Collectorate of the Collector upon whose general register the revenue thereof may be borne,

although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situated, although the estate of which they form a part may, under this section, be deemed to be within the Collectorate of any other Collector.

PART II.

Proceedings before Sale.

India Act XI of 1859, section 2.

Arrear of revenue defined.

5. If the whole or a portion of a kist or instalment of any month of the era according to which the settlement and kistbundi of any mahal have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Ditto section 3.

Latest day of payment.

6. (*1*) The Board, with the sanction of the Local Government, shall determine upon what dates all arrears of revenue, and all demands which, by the Regulations and Acts in force, are directed to be realized in the same manner as arrears of revenue, shall be paid up by sunset in each district under their jurisdiction; in default of which payment, the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

(*2*) The Board shall give notice of the dates so fixed in the Calcutta Gazette, and shall direct corresponding publication to be made, as far as regards each district, in the language of that district, in the office of the Collector, in the Courts of the Judge, Magistrate and Munsifs, and at every police-station of that district.

(*3*) The dates so fixed shall not be changed except by the Board, with such sanction as aforesaid, by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

Bengal Act VII of 1868, section 11, as amended by Act I of 1871, slightly altered.

Power to sell independent tenures.

7. Whenever any revenue payable to Government in respect of any independent tenure shall be in arrear after the latest day of payment determined by the last preceding section, the Collector to whom such revenue is payable may cause such tenure to be sold in the manner and subject to the provisions hereinafter contained, for the sale of estates, for the recovery of arrears of revenue.

India Act XI of 1859, section 5. (Procedure in respect of issue of notifications, *new*.)

Notification to be made in the case of certain descriptions of arrears.

8. (*1*) No estate and no share in any estate, and no independent tenure, shall be sold for the recovery of arrears accruing while—

(*a*) under attachment by order of any judicial authority, notice whereof has been received by the Collector from the

judicial authority, or by the production of an authenticated copy of the order of attachment by the proprietor or judgment-debtor, or any person appointed in his behalf; or

(*b*) managed by the Collector in accordance with an order made by any judicial authority:

otherwise than after the notifications prescribed by section nine and section ten, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been issued in the manner provided in those sections.

India Act XI of 1859, section 6, as modified by Bengal Act VII of 1868, section 3.

Notifications of sale to be issued

9. (*1*) The Collector shall, as soon as possible after the latest day of payment determined by section six, issue notifications in the language of the district—to be affixed in his own office, and in the Courts of the Judge and Munsif and at the police-station, within whose jurisdiction the estate or share of an estate, or the tenure to which the notification relates, is situated; or if the estate, or share of an estate, or the tenure be situated within the jurisdiction of more than one Munsif's Court or police-station, in some one or more of such Courts or stations—specifying the estates or shares of estates, or independent tenures, which will be sold as aforesaid and the day on which the sale of the same will commence, which day shall not be less than thirty clear days from the date of affixing the notification in the office of the Collector.

(*2*) If the revenue of any estate or share of an estate, or independent tenure, to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate or of such tenure, shall be published in the Calcutta Gazette.

(*3*) Except as hereinafter provided, all estates or shares of estates, or independent tenures, so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector, and shall be sold to the highest bidder.

Now

Collector to serve notice on recorded proprietor.

10. (*1*) The Collector shall, at the same time as he shall issue the notifications prescribed in the last preceding section, (*a*) cause a notice to be served on the recorded proprietor of each estate or share of an estate or independent tenure, to be sold under such notification; (*b*) in the case of an estate, share of an estate, or tenure falling under section eight, cause a notification to be issued in the manner hereinafter provided.

(*2*) The notice or notification, as the case may be, shall be in the language of the district, and shall specify—

(*a*) the estate, or share of an estate or the independent tenure, of such proprietor notified for sale;

(*b*) the date on which such sale shall commence,

(3) The notice shall be served by delivering to the recorded proprietor, or if he cannot be found, to some adult member of his family, a copy thereof, signed by the Collector or by a gazetted officer authorized by the Collector in that behalf, and sealed with the seal of the Collector.

Explanation.—A servant is not a member of he family within the meaning of this section.

(4) The serving officer shall require the person to whom the copy of the notice under clause 1(*a*) is so delivered to sign an acknowledgment of service endorsed on the original notice.

(5) If such person refuses to sign the acknowledgment, then the serving officer shall fix a copy of the notice on some conspicuous part of the usual or last known place of abode of the proprietor in the presence of the chaukidar and a member of the panchayat appointed for the village wherein such place of abode is situated, if such member is present in the village at the time of service, and shall require such persons to sign the endorsement.

(6) The notification referred to in clause 1(*b*) of this section shall be issued by fixing up a copy of it at a cutcherry of the proprietor of the estate, or share of an estate, or tenure, or at some conspicuous place upon the estate or share of an estate or tenure, in the manner provided in clause (5) of this section so far as may be; if the proprietor has no cutcherry, or if the serving officer charged with the duty of fixing up the notification is unable to discover the land which comprises the estate, or share of an estate or tenure, he shall, in the same manner and subject to the same conditions, fix up the same at some conspicuous place of the village within which the estate or share of an estate or tenure is situated.

(7) After the notice has been served, or the notification fixed up, the serving officer shall return the original notice or notification to the Collector with an endorsement thereon signed by such officer, stating the time and manner in which the notice or notification was served or issued.

New.

Notices to persons registering name and address.

11. (1) Any person interested in an estate or share of an estate, or independent tenure, whether as recorded proprietor, mortgagee, judgment-creditor, or otherwise, may apply to the Collector to register his name and address.

(2) Such application shall state the name and number on the Collector's rent-roll of the estate in respect of which it is made, or give a description sufficient to identify the tenure or independent tenure to which it refers, and shall be accompanied by the fees prescribed in the fourth schedule hereto annexed.

New.

Collector to register name and address of applicant.

12. On receipt of the application and fee mentioned in the last preceding section, the Collector shall enter the name and address of the applicant in a register, the form of which shall be prescribed by the Board of

Revenue, and shall, within one week of the date on which the notifications under section nine are issued, give him notice by registered letter of the date on which the sale of such estate or share of an estate, or independent tenure, will commence:

Provided that no sale held under this Act shall be void or voidable by reason of the person addressed not receiving such letter, if it be proved that the letter has been duly registered and posted.

India Act XI of 1859, section 7—Modified and curtailed.

Notice to raiyats.

13. Whenever an estate or share of an estate, or independent tenure, is notified for sale under section nine, the Collector shall cause a notification in the language of the district to be published in the manner prescribed by section ten, forbidding the raiyats and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid

New

Collector to exempt an estate &c., from sale on receipt of certain specified amounts between the latest day and the sixth day before sale.

14. (1) If at any time between the latest day of payment determined by section six and sunset of the sixth day before the day of sale notified under section nine, any recorded proprietor or registered tenure-holder tender payment to the Collector of the following amounts:—

(a) the arrear of revenue due;

(b) the interest at the rate of six and a quarter per centum per annum on the arrear of revenue due;

(c) all outstanding charges payable to the Collector in respect of the estate or share of an estate, or the independent tenure, under any Act for the time being in force;

(d) an additional sum equal to one-tenth of the arrear of revenue due.

(2) The Collector shall accept such payment, and shall thereupon exempt the estate or share of an estate, or the independent tenure, from sale, but not otherwise:

Provided that if such arrear shall exceed the sum of five thousand rupees, the additional sum, specified in clause (d) of this section, shall consist of a sum of five hundred rupees, together with an amount equal to one-twentieth of the arrear in excess of the sum of five thousand rupees:

Provided also that the amount levied under clauses (b) and (d) above shall in no case be less than one rupee.

(3) If the sixth day before the day of sale be a Sunday or other close holiday, then payment may

be tendered on the first office day after such sixth day before the sale.

New

Collector to exempt an estate &c., from sale on receipt of certain specified amounts between the last date of tender under preceding section and day of sale.

15. If at any time during the days which may intervene between the time within which the arrear of revenue may be tendered for payment under the last preceding section and sunset of the day immediately preceding the day of sale, any recorded proprietor or registered tenure-holder shall tender payment of the amounts specified in clauses (*a*), (*b*), and (*c*) of sub-section (1) of the last preceding section, and an additional sum equal to one-fifth of the arrear of revenue due, the Collector shall accept such payment and shall thereupon exempt the estate or share of an estate, or independent tenure, from sale, but not otherwise:

Provided that if such arrear shall exceed the sum of five thousand rupees, such additional sum shall consist of a sum of one thousand rupees together with an amount equal to one-tenth of the arrears in excess of the sum of five thousand rupees:

Provided also that the amount levied under this section and under clause (*a*) of the last preceding section shall in no case be less than one rupee.

PART III.

Protection and Exemption from Sale.

CHAPTER I.—*Deposits.*

India Act XI of 1859, section 15.

Deposit for the protection of an estate from sale.

16. (*1*) If any recorded proprietor of an estate or share of an estate, or an independent tenure, shall deposit with the Collector money or Government securities, endorsed and made payable to the order of the Collector, and shall sign an agreement pledging the same to Government by way of security for the revenue of the entire estate or share of an estate, or the independent tenure, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate or share of an estate, or the independent tenure, the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate or share of an estate, or the independent tenure, not being paid before sunset of the latest day of payment determined by section six, the Collector shall apply to the payment of such arrear the said money or securities or such part thereof, or of any interest due on the said securities as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

(*2*) So long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate or share of an estate, or the independent tenure, for the protection of which the said deposit was made, shall be exempted from sale for arrears of revenue.

(*3*) All money and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court:

India Act XI of 1859, section 16.

Withdrawal of the deposit

Provided that it shall be competent to the person making a deposit under this section, or his representative or assignee, at any time to withdraw the deposit and to revoke the pledge of the same.

New—*Vide* also Bengal Act IX of 1880, section 49

Recovery of excess payments by certificate process.

17. (*1*) Whenever any recorded proprietor of an estate or share of an estate, or an independent tenure, shall have paid revenue, together with the amounts and additional sum specified in section fourteen or fifteen, in respect of such estate or share of an estate, or the independent tenure, in excess of the amount proportionate to his own recorded interest therein, he may, within fifteen days of such payment being made, move the Collector by written application to make a certificate as provided by the law for the time being in force for the recovery of public demands, specifying the revenue, amounts, and additional sum which have been paid by such proprietor on account of the recorded share or interest of any other proprietor in the estate or share of an estate, or the independent tenure.

(*2*) Such application shall be verified by the applicant in accordance with the provisions of the Code of Civil Procedure for the verification of plaints, and shall bear a court-fee stamp of the same amount as is payable under the Court-fees Act for the time being in force, in respect of a plaint for the recovery of a sum of money equal to that stated in such application.

(*3*) The Collector may, if he thinks fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; and the same notices shall be issued, and the same proceedings taken thereon, as in the case of such certificate.

India Act XI of 1859, section 9.

Deposits receivable from persons not proprietors.

18. (*1*) The Collector shall, at any time before sunset of the latest day of payment, determined by section six of this Act, receive as a deposit from any person not being a proprietor of an estate or share of an estate, or the independent tenure, in arrear, the amount of the arrear of revenue due, to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate or tenure.

(*2*) In case the person so depositing, whose money shall have been credited as aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share of an estate, or the independent tenure, from which the arrear is due, or any part thereof, it shall be competent to the said Court to order the said person to be put into temporary possession of the said estate or share of an estate, or the independent tenure, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

(*3*) In case the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

(4) If the person so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share of an estate, or the independent tenure, or part thereof, the amount so credited shall be added to the amount of the original lien.

India Act XI of 1859, section 8

Claims against Government held by a defaulter not to invalidate a sale.

19. (1) No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of Government, and no private demand or cause of action whatever held or supposed to be held by any defaulter against Government, shall bar or render void or voidable a sale under this Act.

(2) Nor shall the plea that money belonging to the defaulter and sufficient to pay the arrear of revenue due was in the Collector's hands, bar or render void or voidable a sale under this Act; unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter or after the written agreement mentioned in section sixteen, the Collector shall have neglected or refused on insufficient grounds to transfer it in payment of the arrear of revenue due.

Chapter II

Separate Accounts.

Ditto, section 10

Separation of shares held in common by the opening of a separate account.

20. (1) When a recorded proprietor of a joint estate or independent tenure held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification of the share held in the estate or independent tenure by the applicant.

Ditto, section 11.

Separation of shares consisting of specific portions of land by the opening of a separate account.

21. (1) When a recorded proprietor of a joint estate or independent tenure, whose share consists of a specific portion of the land of the estate or independent tenure, desires to pay his share of the revenue separately, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account of it.

Bengal Act VII of 1876, section 70.

Separation of shares consisting of interest in specific portion of estate by opening separate accounts.

22. (1) When a recorded proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect.

(2) The application must contain a specification in such form as may be prescribed by the Local Government, of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of revenue heretofore paid on account thereof.

Procedure in opening separate accounts.

23. (1) On the receipt of an application under sections twenty, twenty-one, and twenty-two the Collector shall cause a copy thereof to be published in the manner prescribed for a notification under section ten

India Act XI of 1859, part of sections 10 and 11, and Bengal Act VII of 1876, portion of section 70

(2) In the event of no objection being urged by any recorded proprietor within six weeks from the date of publication of the application, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

Date of commencement of separate liability.

24. The date on which the Collector records his sanction to the opening of a separate account under the last preceding section shall be held to be that from which the separate liabilities of the share of the applicant commence

India Act XI of 1859, part of sections 10 and 11, and Bengal Act VII of 1876, part of section 70

No separate account to be opened for incorrect share or for share bearing revenue of less than ten rupees.

25. No separate account shall be opened under section twenty-three in respect of the share of any applicant otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor; nor shall any separate account be opened in respect of any share, the revenue of which is less than ten rupees, or if the revenue of any residuary share which would be formed by the grant of such an application, would be less than ten rupees.

Bengal Act VII of 1876, section 69 modified.

New.

If objection be made, parties to be referred to the Civil Court

26. If on the publication of the applications referred to in section twenty-three, any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object—

India Act XI of 1859, section 12, and Bengal Act VII of 1876, section 74

(a) that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him; or

(b) (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of an estate) that the amount of revenue stated by the applicant to have been heretofore paid on account of such portion of land or on account of the applicant's undivided interest therein is not the amount which has been recognized by the other sharers as the revenue thereof,

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

Bengal Act VII of 1876, section 72.

Application to close a separate account.

27. Whenever any share, in respect of which a separate account has been opened by the Collector under section twenty-three, shall no longer correspond with the character and extent of interest held in the estate by any proprietor, or jointly by two or more proprietors, any recorded proprietor of any interest in the estate for a share of which such separate account is open, may submit to the Collector a written application setting forth the circumstances under which such share no longer corresponds with the character and extent of interest held as aforesaid, and specifying the manner in which such share has been broken up and distributed among the proprietors of the estate, or the manner in which the said character and extent of interest have been changed, and praying that the separate account standing open in respect of such share may be closed; and if he so desire, that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been opened under section 25 for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas share being kept jointly in the names of the remaining proprietors C, D, and E

In course of time X has inherited A's 4 annas share, and also C's interest in the 7 annas share which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows:—

X	...	..	...	...	9 annas.
B	...	...	...	...	3 ,,
D and E		...	...	...	4 ,,

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share, and also the separate account which is open in respect of B's 5 annas share, as neither of these shares corresponds with the extent of interest held by any one proprietor or held jointly by two or more proprietors in the estate.

X may, in the same application, also apply for the opening of a separate account in respect of the 9 annas share which he now holds. Any of the other proprietors may also make a similar application.

Ditto, section 73 and part of section 74

Separate account may be closed and another opened.

28. (*1*) On receipt of the application mentioned in the last preceding section, the Collector shall cause a copy of the same to be published in the manner prescribed for a notification under section ten, and if within six weeks of the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as desired by him under sections twenty, twenty-one, and twenty-two, as the case may be.

(*2*) If any recorded proprietor object that the share in respect of which any separate account is open as aforesaid has not been broken up and does still correspond with the character and extent of interest held by any proprietor or proprietors, the Collector shall proceed as provided by section twenty-six.

New—based on section 28 of Bengal Act VII of 1876

Collector may close an incorrect separate account *suo motu*.

29. (*1*) Whenever it shall come to the notice of the Collector that a share for which a separate account has been opened under section twenty-three, does not correspond with the character and extent of interest held in the

estate by the propiretor with whom the separate account was opened, the Collector shall issue a notice to the said proprietor informing him of his intention to close the separate account, and requiring him to state in a written application any objection he may have thereto. Such notice shall be served in the manner prescribed for the service of a notice under sections ten and twelve.

(2) If within six weeks from the service of the notice, the proprietor shall not make such application, or if the objections made by him are not in the opinion of the Collector good and sufficient, the Collector shall record a proceeding stating his reasons for believing the separate account to be incorrect, and shall order that the separate account be closed, and it shall be closed accordingly.

Act XI of 1859, section 13.

Sale of separate shares.

30. (1) Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector shall, in the first place, put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due.

(2) In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale notified under section nine

(3) The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of revenue assigned thereto.

Ditto section 14.

Entire estate may be sold under certain conditions.

31. (1) If in any case of a sale held according to the provisions of the last preceding section there be no bid, or if the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share with the penalties specified in section fifteen

(2) If such purchase be completed, the Collector shall give such certificate and delivery of possession as are mentioned in sections fifty-seven and fifty-eight to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

(3) If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is notified by section ten of this Act.

Chapter III.—Estates under Court of Wards.

Bengal Act IX of 1879, section 23, as amended by Act II of 1881, section 4, clause (1)

Estate under Court of Wards exempted from sale.

32. Except as hereinafter provided by section thirty-eight, every estate, and subject to the provisions of section thirty, every share or part of an estate for which a separate

account has been opened under section twenty-three, shall be exempt from sale for arrears of revenue which have accrued whilst such estate, share, or part has been under the charge of the Court of Wards in accordance with the provisions of Bengal Act IX of 1879 or any similar Act for the time being in force:

Provided that all such arrears of revenue shall be a first charge upon the sale proceeds of any estate, share or part which may be sold for any other cause than such arrears of revenue.

Bengal Act IX of 1879, section 23, as amended by Act III of 1881, section 4, clause (2).

Recovery of arrears of revenue due when estate ceases to be under charge of Court of Wards.

33. If at the time when such estate, share or part ceases to be under the charge of the Court of Wards an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses, and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit:

Provided that when such estate, share or part has been attached under this section, the proceeds shall be paid to the Collector, and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment, and shall pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part, or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

Bengal Act IX of 1879, section 24

Estate belonging to minors not to be sold for arrears of revenue.

34. No estate, the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years, but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

Ditto, ditto.

Collector may attach estate.

35. The Collector may, on an arrear accruing on any estate mentioned in the last preceding section, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager, or by farming it as he may think fit for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

Ditto, section 25.

When exemption from sale applies.

36. The exemption from sale for arrears of revenue referred to in section thirty-four shall only apply to cases in which a written notice of the fact that the estate

is the sole property of one or more minors and entitled to such exemption has been served on the Collector before the sale.

Application of proceeds of farmed estate.

37. (*1*) When an estate has been farmed under section thirty-five, the proceeds of such farm shall be paid to the Collector, and the Collector, after deducting the amount of the claims of Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the proprietor or to his duly constituted agent, or shall dispose of them in any of the modes mentioned in section forty-nine or section fifty of Bengal Act IX of 1879.

Bengal Act IX of 1879, section 26, adding the last sentence of the proviso to section 4 of Act III of 1881.

(*2*) Whenever such estate shall be released from attachment, the Collector shall furnish such proprietor or his duly constituted agent with an account of the receipts and expenditure extending over the time when such estate was under attachment.

Conditions under which estate may be sold for arrears accrued under Court.

38. Notwithstanding anything in clause 5, section 8, Regulation I of 1793, or in sections thirty-two and thirty-three contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court of Wards, may at any time be sold under the provisions of this Act, if the Court of Wards has certified in writing that the interests of the ward require that such estate, share or part of an estate be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

Section 23(*a*) added to Bengal Act IX of 1879 by Act III of 1881, section 4.

Chapter IV.

Attached Estates.

Estates under revenue attachment exempted from sale.

39. No estate, or share or part of an estate, held under attachment by the revenue authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

India Act XI of 1859, section 17, penultimate sentence.

Explanation.—The attachment of an estate, or share or part of an estate, under the provisions of section ten of the Public Demands Recovery Act, 1880, is not an attachment within the meaning of this section, and does not exempt the estate, or share or part of an estate, so attached from sale for arrears of revenue.

New.

Estates under judicial attachment exempted from sale till close of the year.

40. No estate, or share or part of an estate held under attachment or managed by a revenue officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management until after the end of the year in which such arrears accrued.

India Act XI of 1859, section 17, last sentence.

PART IV.

Sales.

Sales where to be held.

41. Sales shall ordinarily be held by the Collector in the Collector's office at the sadar station of the district:

Ditto, section 19.

Provided that it shall be competent to the Board to prescribe a place for holding sales other than such office whenever they shall consider it beneficial to the parties concerned.

India Act XI of 1859, section 20.

Adjournment of sales.

42. In case the Collector shall be unable from sickness, from the occurrence of a holiday or from any other cause, to commence the sale on the day of sale fixed as aforesaid; or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner and announcing the adjournment by a written notification stuck up in his cutcherry, and so on, from day to day, until he shall be able to commence upon or to complete the sale; but, with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

New

Procedure at sales.

43. (1) On or before the day of sale notified under section nine, the notifications affixed in the Collector's office under that section, together with the return of publication of notice in the Judge's Court, and the returns of service of all and any notices issued and declarations forwarded under any of the provisions of this Act, shall be laid before the Collector of the district or a Deputy Collector specially empowered by him in this behalf, who shall satisfy himself that all notifications and notices previous to sale by this Act required have been duly issued for the period at the places and in the manner by this Act prescribed.

(2) On being so satisfied, or on receiving a report from the Deputy Collector specially empowered as above that he has so satisfied himself, the Collector of the district shall record an attestation in the form prescribed in the second schedule hereto annexed, that all the requirements of this Act in respect of the publication of notifications and notices purport to have been complied with, and such attestation shall be kept with, and form part of, the record of sale proceedings.

(3) If the Collector be not satisfied that the prescribed notifications and notices have been duly issued and served in respect to any estate notified for sale under section nine, he shall postpone the sale and issue fresh notifications and notices for the period at the places and in the manner by this Act prescribed.

India Act XI of 1859, section 21.

Order of selling.

44. Upon completion of the attestation mentioned in the last preceding section, the sales shall proceed in regular order; the estate or share of an estate, or independent tenure, to be sold bearing the lowest number on the revenue-roll of the Collector's office of the district being put up first, and so on, in regular sequence: and it shall not be lawful for the Collector to put up any estate or share of an estate, or independent tenure, out of its regular order by number, except where it may be necessary to do so on default of deposit, as mentioned in the next succeeding section.

Ditto, section 22

Deposit on account of purchase-money

45. The person who shall be declared the purchaser of an estate or share of an estate, or independent tenure, at any such public sale as aforesaid, shall be required to deposit immediately or as soon after the conclusion of the sale of

the estate or share of an estate, or independent tenure, as the Collector may think necessary, either in cash, currency notes or Government securities to be valued at the market rate of the day, duly endorsed, one-fourth of the amount of his bid; and in default of such deposit, the estate or share of an estate shall forthwith be put up again and sold.

India Act XI of 1859, section 23.

Full payment of purchase money

46. (*1*) The full amount of purchase-money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate, or independent tenure, bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth.

(*2*) On default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share of an estate, or independent tenure, shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share of an estate, or independent tenure, or to any part of the sum for which it may subsequently be sold.

(*3*) In the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the Collector shall proceed to levy the difference from him under the provisions of the Public Demands Recovery Act, 1880, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner prescribed under section sixty, for the disposal thereof.

Ditto, section 24

Re sale on default of payment of purchase-money.

47. (*1*) When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section nine, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred.

(*2*) If the payment, or tender of payment, of the arrear on account of which the estate or share of an estate, or independent tenure, was first sold, and of any arrear which may have subsequently become due, and of the amounts and the additional sum specified in section fifteen, shall be made by or on behalf of the proprietor of the estate or share of an estate, or independent tenure, before sunset of the third day, the issue of the notification of re-sale shall be stayed.

Ditto, ditto.

Method of calculating amount to be recovered from bidders when default has occurred more than once.

48 (*1*) If default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized:

(*2*) The rules contained in sections forty-five and forty-six shall be applicable to every such re-sale.

New.

49. Any person interested in any estate or share of an estate, or an independent tenure, sold for arrears of revenue or injuriously affected by such sale may, within thirty days of the date of the sale, apply to the Collector to annul the sale; and if it appear to the Collector that material irregularity has occurred in the service of any of the notifications or notices referred to in section forty-three, and that substantial injury has been caused thereby, he shall annul the sale or issue such order authorized by law as the justice of the case may require.

Application to Collector against sales.

India Act XI of 1859, section 25

50. (*1*) If the Collector by an order issued under the last preceding section refuse to annul the sale, the applicant may within thirty days from the date of such order appeal to the Commissioner.

Appeal to Commissioner against sales.

(*2*) The Commissioner shall hear such appeal, and if he be satisfied that substantial injury has been caused by such sale, he may annul the same.

(*3*) The decision of the Commissioner upon any appeal made under this section shall be final.

Ditto, section 32

51. The annulment of a sale made under sections forty-nine and fifty of this Act shall be publicly notified by the Collector in the same manner as the becoming final and conclusive of sales is required to be notified by section fifty-seven, and the amount of purchase-money shall be forthwith returned to the purchaser with interest at the rate of four per centum per annum, which shall be paid by Government, unless the proprietor shall have become liable for or have deposited these sums under any section of this Act.

Notification of annulment of sale

Ditt section 26 modified

52. (*1*) Any person interested in any estate or share of an estate or independent tenure, sold for arrears of revenue or injuriously affected by such sale, may within thirty days of the date of the sale represent the case to the Board of Revenue, who, if they are satisfied that hardship or injustice has been caused by such sale, may annul it and may cause the estate, share of an estate, or independent tenure, to be restored to the proprietor on such condition as may appear equitable and proper.

Annulment of sale by Board of Revenue.

New

(*2*) The anulment of a sale made under this section shall be publicly notified by the Collector in the same manner as the becoming final and conclusive of sales is required to be notified by section fifty-seven.

53. When a sale has been annulled under section forty-nine or fifty, and the annulment has been publicly notified under section fifty-one, the Collector shall issue sale-notifications under section nine and sale notices under section ten, and shall proceed to sell the estate again on the first regular sale day. The provisions of sections fourteen and fifteen shall apply as far as may be to such resales.

Resale of estate after annulment of sale.

New

54. (*1*) Notwithstanding anything hereinbefore contained, the recorded proprietor of an estate or share of an estate or independent tenure, sold for arrears of revenue, may—

(*a*) if no application is made to the Collector to annul the sale under section forty-nine within thirty days of the day of sale; or

Recorded proprietor empowered to redeem estate, &c., under certain specified conditions.

(*b*) if such application be made and no appeal be preferred to the Commissioner against the order of the Collector under section fifty within thirty days of the date of such order; or

(*c*) if an appeal be preferred to the Commissioner under section fifty within thirty days from the date of the order dismissing the appeal,

apply to the Collector to annul the sale on his depositing in the office of the Collector—

(*d*) the arrears of revenue on account of which the estate, share of an estate, or the independent tenure, was first sold, and of any arrears which may have become subsequently due, and all outstanding charges payable to the Collector in respect of the estate, share of an estate or independent tenure under any Act for the time being in force, together with the additional penalties specified in section fifteen and the interest on the whole amount calculated at the rate of six and a quarter per centum per annum from the day of sale to the date when the deposit under this section is made;

(*e*) a sum equal to one-tenth of the purchase-money;

(*f*) a sum equal to interest at the rate of four per centum per annum on the purchase-money.

(*2*) If such deposit is made within thirty days of the date of the application, the Collector shall make an order annulling the sale.

(*3*) If the recorded proprietor fail to make the deposit within the period hereinbefore prescribed, the Collector shall forthwith make an order dismissing the application, and the sale in respect of which such application was made shall become final and conclusive at noon of the day on which such order was made, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

(*4*) The order of the Collector upon an application made under this section shall be final.

(*5*) When the Collector annuls a sale under this section, the annulment of the sale shall be publicly notified by the Collector in the same manner as the becoming final and conclusive of sales is required to be notified by section fifty-seven, and the amount of purchase-money shall be forthwith returned to the purchaser with the amounts described in clauses (*e*) and (*f*) in sub-section (1) of this section, the sums mentioned in clause (*d*) of sub-section (1) of this section being credited to Government.

Civil Cour debarred from entertaining suit for annulling sales for arrears of revenue.

55. From and after the date on which this Act shall come into force, no Civil Court shall entertain a suit for annulling the sale of an estate, share of an estate or an independent tenure, sold for arrears of revenue.

Sales when final.

56. (*1*) Subject to any application made to annul a sale under section fifty-four, all sales of which the purchase-money has been paid up under section forty-six, and in respect of which no application to annul the same has been made within the period for such applications under section forty-nine, shall be final and conclusive at noon of the sixtieth day from the day of sale, reckoning the said day of sale as the first of the said sixty days.

India Act XI of 1859, section 27—modified.

(2) Sales in respect of which an application to annul the same has been made under section forty-nine and no appeal has been preferred to the Commissioner against the order of the Collector under section fifty shall, subject as aforesaid, be final and conclusive at noon on the thirty-first day from the date of the order if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

(3) Sales against which an appeal may have been preferred and dismissed by the Commissioner shall, subject as aforesaid, be final and conclusive at noon on the fifteenth day from the date of the order dismissing the appeal, if more than sixty days from the day of sale, or if less, then at noon of the sixtieth day as above provided.

Illustration.—If the sale takes place on the 15th of April, it will, unless affected by the conditions prescribed under this section, become final and conclusive at noon of the 13th of June.

India Act XI of 1859, section 28.

Certificate of sales.

57. (1) Immediately upon a sale becoming final and conclusive, the purchaser shall be entitled on application to the Collector and on payment of the stamp duty required by law, or on proof that it has been paid, to receive a certificate of title in the form prescribed in the third schedule hereto annexed, and the certificate after registration under Act III of 1877, or any other law for the time being in force for the registration of documents, shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate, or independent tenure sold, being vested in the person or persons named from the date specified therein.

(2) On such certificate being granted, the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the Munsifs and police-stations within whose jurisdictions any part of the estate or share of the estate, or independent tenure, sold shall be situated.

Ditto, section 29.

Delivery of possession.

58. (1) When a certificate of title has been granted under the last preceding section, the Collector shall order delivery of possession of the estate or share of an estate, or independent tenure, purchased, to be made by proclaiming to the occupants of the property by beat of drum, or in such other mode as may be customary, at some convenient place or places, that the ownership of the estate has been transferred from the former proprietor or proprietors to the purchaser, and by affixing a copy of the certificate at the *mal* cutcherry or in some conspicuous place on the estate or share of an estate, or the independent tenure, purchased; and, if need be, by removing any person who refuses to vacate the same.

(2) It shall not be necessary for the Collector to order delivery of possession to be made in any other way than is provided in this section.

Bengal Act VII of 1868 section 8—modified and enlarged

Certificate to be conclusive evidence of regularity in procedure.

59. (1) With every certificate of title which may be given to any purchaser under section fifty-seven, there shall also be delivered to him free of cost a certified copy of the attestation made under section forty-three, and such certificate and attestation shall be conclusive evidence in favour of such purchaser and of every person claiming under him, that all notifications and notices in or by this Act, required to be served or posted, have been duly served and posted, for the period, at the places and in the manner by this Act required, and that the sale to which they refer was a sale under this Act.

(2) The title of any person who may have obtained any such certificate and attestation shall not be impeached or affected by reason of any omission, informality or irregularity as regards the serving or posting of any notification or notice in the proceedings of the sale at which such person may have purchased.

India Act XI of 1859, section 31—slightly altered

Disposal of purchase-money.

60. (1) The Collector shall apply the purchase-money first to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate, or independent tenure, sold, with interest calculated at the rate of six and a quarter per centum per annum, and, secondly, to the liquidation of all outstanding demands debited to the estate or share of an estate, or the independent tenure, in the public accounts of the district, holding the residue, if any, in deposit on account of the late recorded proprietor or proprietors of the estate or share of an estate, or the independent tenure, sold, or their heirs or representatives to be immediately payable to his or their receipt in the manner following, to wit, in shares proportioned to their recorded interest in the estate or share of an estate, or the independent tenure, sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

(2) If before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor or proprietors except under precept of a Civil Court:

Bengal Act VII of 1868, section 1

Provided that the residue, if any, of the purchase-money of an independent tenure shall be held in deposit on account of the late holder of the tenure, and not on account of the proprietor or proprietors of the estate.

New

Procedure on application by other than late proprietor

61. When any application for payment of the residue of the purchase-money of an estate, share of an estate, or the independent tenure, shall be made to the Collector under the last preceding section by any person other than the late recorded proprietor or proprietors, the Collector may, if he shall think fit, cause a notification to be published in the manner prescribed by section nine, requiring all persons who object to the payment of the said residue to the applicant to appear before the Collector on a day to be specified in such notification, not being less than thirty days from the date of publication thereof, and to present a written statement of their objections, and on the day specified he shall refer the parties to the Civil Court:

Provided that no person who shall fail to present his objection to the Collector as prescribed in this section shall be entitled at any future time to claim payment of the said residue from the Collector.

India Act XI of 1859, section 56

Punishment for contempt

62. Any Collector conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open cutcherry or office for the time being, by fine to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector, shall carry his sentence into effect:

Provided that an appeal from any order passed under this section shall lie to the Commissioner, whose decision shall be final.

India Act XI of 1859, section 57.

Default in making deposit to be considered a contempt.

63. A default to make good a bid by making the deposit required by section forty-five of this Act shall be held to be a contempt.

Ditto, section 58.

Power of Government to purchase at a sale.

64. (1) When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon,

(a) if there be no bid, the Collector shall purchase the estate on account of Government for a sum not exceeding one rupee; or

(b) if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector may take or purchase the estate on account of the Government at the highest amount bid.

(2) Whenever the Collector shall purchase an estate under clause (a) or (b) of sub-section (1) of this section, he shall be entitled to realize, under the Public Demands Recovery Act, 1880, any arrears of revenue or other demands still due from the defaulting proprietor and not covered by the sum paid for the estate or share of an estate, or the independent tenure, and in all cases the Government shall acquire the property subject to the provisions of this Act.

PART V.

Rights and Liabilities of Purchasers.

India Act XI of 1859, section 30—modified and added to.

Liability and rights of purchaser.

65. The person who shall under section forty-five, or in the event of a resale under section forty-seven or fifty-three be declared the purchaser of an estate or share of an estate, or an independent tenure, shall be answerable for all instalments of revenue, and shall be entitled to collect rents from all persons liable to pay the same which may fall due after the latest day of payment of the arrears in respect of which the estate, share of an estate, or the independent tenure, was sold.

Ditto section 37

Rights of a purchaser of a permanently-settled estate sold for its own arrears.

66. The purchaser of an entire estate in the permanently-settled districts of Bengal, Bihar and Orissa, sold under this Act for the recovery of arrears due on account of the same shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures and forthwith to eject all tenure-holders, with the following exceptions:

(a) istimrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement:

(b) tenures existing at the time of settlement, which have not been held at a fixed rent:

Provided always that the rents of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures:

(c) tenures created since the time of settlement, and farms for terms of years when such tenures and farms have been duly registered under the provisions of this Act:

(*d*) leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds have been made, or wherein mines have been sunk.

Bengal Act VII of 1868, section 12.

Rights of purchaser of independent tenure.

67. The purchaser of an independent tenure sold under the provisions of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all tenures, and forthwith to eject all tenure-holders, with the following exceptions:—

(*a*) the classes specified in clauses (*a*), (*b*) and (*d*) of the last preceding section:

(*b*) tenures created or recognized by the settlement proceedings of any current temporary settlement as tenures bearing a rent which is fixed for the period of such settlement.

Bengal Act VII of 1868, sections 13 and 14.

Purchaser's right of enhancement

68. Such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the class of exceptions described in clause (*d*) of section sixty-six if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years; but not otherwise:

Provided always that nothing in this section contained shall be construed to entitle any such purchaser as aforesaid to eject any raiyat, having a right of occupancy at a fixed rent, or at a rent assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.

India Act XI of 1859, section 52.

Rights of a purchaser of an estate not permanently settled, sold for its own arrears.

69. The purchaser of an estate in a district not permanently settled, sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with raiyats or the like settled or accredited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter or renew, except leases of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon gardens, plantations, tanks, wells, canals, places of worship, or burning or burying grounds, have been made, or wherein mines have been sunk, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect:

Provided that nothing contained in this section shall be construed to entitle any purchaser of land at a public sale for arrears of revenue to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former proprietor, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, or in cases in which it may be proved that, according to the custom of the pargana, mauza, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the regulations of Government.

India Act XI of 1859, section 53.

Rights of a purchaser being a sharer in any estate.

70. Excepting proprietors with whom the Collector, under section twenty-three, has opened separate accounts, any recorded or unrecorded proprietor or co-partner, who may purchase the estate of which he is proprietor or co-partner, or who by re-purchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act; and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its incumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or raiyats, which were not possessed by the previous proprietor at the time of the sale of the said estate.

India Act XI of 1859, section 54—modified

Rights of purchasers of shares of estate.

71. When a share or shares of an estate may be sold under the provisions of section thirty or thirty-one, whether the share or shares so sold be those for which a separate account has been opened, or the remaining portion of the estate for which no separate account has been opened, the purchaser shall acquire the share or shares subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Ditto, section 55.

Recovery of arrears due to defaulters.

72. Arrears of rent which on the latest day of payment may be due to the defaulter from all persons liable to pay the same, shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the said latest day.

PART VI.

Protection of Tenures.

Ditto, section 32.

Registration of tenures.

73. The following rules for the registration of tenures and of farms for terms of years shall be observed:—

there shall be two sets of registers—one for common registry and one for special registry:

Ditto, section 39.

common registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue except the Government:

special registry shall secure tenures and farms against any auction-purchaser at a sale for arrears of revenue including the Government.

India Act XI of 1859, section 40

Application for registry

74. (1) The holder of any tenure desirous of registering it shall apply by petition to the Collector of the district to which the estate belongs.

(2) The application shall state which description of registry is desired, and shall contain the following particulars so far as the same are ascertainable:—

(a) the pargana or parganas in which the tenure is situated;

(b) the nature of the tenure and the name and revenue roll-number of the *mahal* in which it is situated;

(c) the name or names of the village or villages whereof the land is composed or wherein it is situated;

(d) the area of the land comprised in the tenure, with its boundaries in complete detail;

(e) the amount of rent payable annually for the tenure, and whether the rent is fixed for a term of years or in perpetuity, and the duties, if any, required to be performed on account of it;

New

(f) the date of the deed constituting the tenure, or, where no such deed exists, a statement of the evidence on which the applicant relies for proving that he and his predecessors in title (if any) have been in possession of the tenure for twelve years preceding the date of the application;

(g) the name of the proprietor who created the tenure;

(h) the name of the original holder of the tenure;

(i) the name of the present possessor, and, if he be not the original holder, the mode in which he succeeded to the tenure, whether by inheritance, gift, purchase, or otherwise, and whether he holds jointly or solely.

New.

(3) The deeds or other evidence referred to in clause (f) of this section shall be submitted with the application for the consideration of the Collector.

(4) Holders of such farms as are described in section seventy-three may apply in like manner for registry of the same. The application shall contain such of the foregoing particulars as are applicable to farms.

India Act XI of 1859, section 41.

Procedure on application for common registry.

75. (1) When the application is for common registry, the Collector shall serve a notice on the recorded proprietor or proprietors of the estate in which the tenure or farm is situated, or the authorized agent of such proprietor or proprietors, with a copy of the application annexed; and shall cause a notice, with a copy of the application annexed, to be affixed in his office, and at the *mal* cutcherry of the estate in which the tenure or farm is situated, or in such other place or places as in the opinion of the Collector may be best suited to give publicity to the application, requiring the proprietor or any person interested, within thirty days from the issue of the said notice, to file any objections he may have to the registry of the tenure or farm, or to any statement contained in the application.

(2) If within the limited time no objection is made, the Collector shall consider the deeds of other evidence produced by the applicant, and if

he shall, on summary enquiry or on consideration of such evidence as he may cause to be adduced, be satisfied of their genuineness and sufficiency, he shall register the tenure or farm.

(3) If within the limited time an objection is made by any recorded proprietor, or by any person interested, not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection, or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient, the Collector shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall grant the application.

(4) If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall register the tenure or farm.

India Act XI of 1859, section 42.

Procedure on application for special registry.

76. (1) When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section.

(2) If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected.

(3) If within the limited time an objection is made by any recorded proprietor, or by any person interested, not being a proprietor, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable grounds of objection, or if the deeds or other proofs produced by the applicant shall not appear genuine and sufficient, the Collector shall suspend proceedings and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made.

(4) If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

Ditto, section 43.

Registration of leases of certain lands.

77. Leases of lands of the description mentioned in clause (d) of section sixty-six, may be registered, at the option of the holders, in the manner and under the rules hereinbefore provided for the registry of tenures.

Ditto, section 44.

Registration of old tenures.

78. (1) Tenures of the classes described in clauses (a) and (b) of section sixty-six, may be registered at the option of the holders, and when so registered shall be entered only in the special register.

(2) Application for such registry shall contain the particulars specified in section seventy-four, so far as the same are ascertainable, and notices shall be served and issued in the manner prescribed in section seventy-five.

(3) If within the limited time no objection is made by any recorded proprietor or by any person interested, not being a proprietor, the Collector shall make such enquiries as may be necessary to satisfy himself as to the validity of the tenure, and, if so satisfied, he shall report the case to the Commissioner, who shall act according to the provisions of section seventy-six, and the provisions of the said section shall be applicable to cases in which objections shall be made:

Provided always that nothing contained in this section shall be understood as rendering registration necessary for the protection of tenures of the description herein referred to.

Registration of rent-free tenures in estates under partition.

Bengal Act VIII of 1876, section 96

79. On receiving from the Deputy Collector appointed under Bengal Act VIII of 1876 a notice in accordance with section ninety-six of that Act, to the effect that a rent-free tenure has been created in an estate under partition, the Collector shall, under section seventy-six, report the case to the Commissioner who, if satisfied that the revenue of the parent estate is sufficiently secured, shall direct the tenure to be specially registered.

Expenses of measurement, survey, or local enquiry.

India Act XI of 1859, section 46.

80. The actual expenses of any measurement, survey or local enquiry made under sections seventy-six and seventy-eight shall be borne by the person who applies for the registry of his tenure or farm, and may be realized under the provisions of the Public Demands Recovery Act, 1880; and such person may be required by the Collector from time to time to make such payments on this account as he may consider necessary.

Effect of entry in the special register.

Ditto, section 50

81. (1) Entry in the special register shall be an effectual protection of the tenure or farm so registered, unless in a suit instituted by Government in a Civil Court within the period allowed for suits for the recovery of the public revenue a decree be passed pronouncing the registration to have been obtained by fraud, to the injury of the Government revenue:

Provided that a tenure or farm in the hands of a *bonâ fide* purchaser for value shall not be avoided by reason of such fraud.

(2) The tenure or farm shall be liable to such amount of rent as would have been fair and equitable at the time of the special registry thereof, such amount to be fixed by the Collector.

Protection of tenures pending enquiry in case of sale of parent estate for arrears of revenue

Ditto, section 51.

82. Tenures and farms described in clause (c) of section sixty-six, for the special registration of which application shall be made within the prescribed time, and in respect of which the Collector shall have commenced the enquiry prescribed in section seventy-six, shall, in case of the sale of the parent estate for arrears of revenue, be protected pending the duration of such enquiry, and shall be protected eventually by registration, if the final award of the revenue authorities upon such application be in favour of the claimant.

New

Period within which applications may be made.

83. Applications for common or special registry or for registration under this Part may be made at any time on payment of the fee prescribed in the fourth schedule hereto annexed:

Provided that the deed or deeds constituting or creating the tenure for registry or registration of which application is made shall have been duly registered within the period, in the manner and at the place prescribed by the Indian Registration Act, 1877.

PART VII.

Miscellaneous Provisions.

India Act XI of 1859, section 49 - modified.

Order of Commissioner under Part VI open to revision within one year.

84. The order of a Commissioner for the special registry of a tenure under the provisions of Part VI of this Act shall be open at any time within one year from the date of registry to revision by the Board of Revenue or the Local Government, on the ground of the Government revenue not having been sufficiently secured, or of the invalidity of the tenure, as the case may be.

Ditto, section 48

Suit for cancelment of registry of a tenure or farm.

85. Subject to the general law of limitation, any person thinking himself wronged by the registry of a tenure or farm may file a suit for the cancelment of the same.

New.—*Vide* Bengal Act VII of 1880, section 15.

Collector may refer certain cases to his subordinates.

86. (*1*) The Collector may refer to any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him any application under sections twenty, twenty-one, twenty-two or twenty-seven, any case arising under section twenty-nine, any application under section sixty-one, and any application for common registry under section seventy-five, and such officer as aforesaid shall hear and determine such application or case accordingly.

(*2*) The provisions of this Act shall apply to any such officer hearing or determining such applications and cases.

(*3*) All orders passed by any officer subordinate to a Collector shall be appealable to the Collector within fifteen days; all orders passed by a Collector shall, subject to the provisions of this Act, be appealable to the Commissioner within thirty days, and all orders passed by a Commissioner shall, subject to the provisions of this Act, be appealable to the Board within sixty days, after the passing of such orders respectively.

New

Powers for taking evidence.

87. The Commissioner, the Collector, and every officer to whom any application or case may be referred by the Collector under the last preceding section, shall have the powers conferred on Civil Courts by the Code of Civil Procedure for compelling the attendance of witnesses and the production of evidence, and for examining witnesses in any enquiry or appeal which he may be empowered to make or entertain under the provisions of this Act.

Bengal Act III of 1862, section 3.

Fees leviable under certain sections.

88. The Collector on the part of Government shall demand from applicants under the sections mentioned in the first column of the fourth schedule hereto annexed the fees specified in the third column thereof, which schedule shall be taken as part of this Act, and applications under the said sections shall not be received unless the said fees are tendered therewith.

India Act XI of 1859, section 60

Regulations to be in force in certain estates.

89. The provisions of Regulation VII of 1822 and Regulation IX of 1825, shall be in force in every estate, in any part of which, a measurement, survey or local enquiry may be made under this Act; and in every estate purchased or taken on account of Government under this Act.

THE FIRST SCHEDULE.

(REFERRED TO IN SECTION 2.)

Regulations of the Bengal Code.

Number and year.	Subject.	Extent of repeal.
1	2	3
V of 1812 ...	A regulation for amending some of the rules at present in force for the collection of the land revenue.	Sections 24 and 25.
XI of 1822 ..	A regulation for modifying and explaining the existing regulations relative to the sale of land for the recovery of arrears of revenue, &c.	Section 36.

Acts of the Governor-General of India in Council.

1	2	3
XII of 1841 ...	An Act for amending the Bengal Code in regard to sales of land for arrears of revenue.	Section 2.
X I of 1859 ...	An Act to improve the law relating to sales of land, &c	The whole Act.

Acts of the Lieutenant-Governor of Bengal in Council.

1	2	3
III of 1868 ...	An Act to amend Act XI of 1859 ...	The whole Act.
VII of 1868 ...	An Act to make further provision for the recovery of arrears of land revenue and public demands recoverable as arrears of land revenue.	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14.
II of 1871 ..	An Act to amend the procedure for the recovery of arrears of land revenue in respect of tenures not being estates.	The whole Act.
VII of 1876	An Act to provide for the registration of revenue-paying and revenue-free lands, &c.	Sections 69, 70, 71, 72, 73 and 74.
IX of 1879 ...	An Act to amend the law relating to the Court of Wards.	Sections 23, 24, 25 and 26.
III of 1881 ..	An Act to amend the Court of Wards' Act, 1879.	Sections 2 and 4.

THE SECOND SCHEDULE.

(REFERRED TO IN SECTION 43.)

Form of Attestation.

I hereby attest that all the notifications, notices and proclamations required by sections in the case of the sale of estate, tauzi No. (or share of estate, tauzi No.) for an arrear of revenue are reported by the Collector's establishment to have been duly issued and purport to have been duly posted and served.

A. B.

Collector of

THE THIRD SCHEDULE.

(REFERRED TO IN SECTION 57.)

Certificate.

I certify that A. B. has purchased under Act No. the estate (*or share of an estate, or independent tenure,*) specified below standing in the tauzi of the district of , and that his purchase took effect on the day of (*being the day after that fixed for last day of payment*).

(Signed)

Collector.

SPECIFICATION.

(*if of an entire estate.*)

Tauzi number
Name of estate
Name of the former proprietor
Revenue

(*if of a share of an estate.*)

Tauzi number of the entire estate
Name of the entire estate
Revenue of the entire estate
Description of the share sold
Subordinate tauzi number of the share sold
Name of the former proprietor of the share sold
Revenue for which the share sold is separately liable

(*if of an independent tenure.*)

Tauzi number or number on Collector's register
Name of the tenure
Revenue
Name of the former tenure-holder

THE FOURTH SCHEDULE.

(Referred to in sections 11 and 83.)

Fees.

Section.	Nature of application.	Fees payable.
1	2	3
(1) 14	For registering an address to which notice of default may be sent.	Two rupees yearly.
(2) 15	For deposit of money or securities to protect estate from sale.	Half per cent on the amount deposited. (Subject to a minimum of one rupee.)
(3) 15	For interest on securities so deposited drawn by the Collector.	Half per cent on the amount drawn. (Subject to a minimum of one rupee.)
(4) 3	For withdrawal of a deposit so made.	Half per cent on the amount withdrawn. (Subject to a minimum of one rupee.)
(5) 17	For deposit for protection of estate by non-proprietor	Half per cent on the amount deposited. (Subject to a minimum of one rupee.)
(6) 20, 21 or 22.	For opening separate account in respect of a share in an estate.	If the revenue of the applicant's share of the estate do not exceed Rs 1,000—at the rate of ten per cent. upon the revenue. If the revenue of the applicant's share of the estate exceed Rs. 1,000—at the rate of ten per cent. on Rs. 1,000 and two per cent. on all above that amount.
(7) 66, 69 or 70	For registry of tenures.	Two rupees on each application.

STATEMENT OF OBJECTS AND REASONS.

Act XI of 1859, the principal law regarding the sale of estates for arrears of revenue was mainly a reproduction of Act I of 1845, as that Act again was of Act XII of 1841. It was passed for the special purposes mentioned in its preamble. Amending Acts have been passed since 1859, viz, III (B.C) of 1862, VII (B C.) of 1868, II (B C) of 1871, and I (B C.) of 1875, and Act VII (B.C.) of 1880 gave additional powers for recovering Government dues.

2. By Act III (B.C.) of 1862 the scale of fees prescribed for opening separate accounts and for common and special registry was reduced; the period allowed for registration of tenures created before the passing of that Act was extended to three years, and a period of three months from the date of the document creating them was fixed for the registration of tenures created after the passing of that Act

By Act VII (B.C.) of 1868 definitions of certain principal terms were supplied, omissions were supplemented, and doubts cleared up. The law regarding appeals was modified, and the periods for which notices of sales were allowed, and at which sales should become final, were extended. It contained new provisions regarding the service of notices, and aimed at giving finality to sales and security to purchasers It placed tenures paying direct to Government on the same footing as regards sales, and gave the purchaser, *mutatis mutandis*, the same privileges as in the case of permanently-settled estates. It contained also some minor provisions. It created a new method of procedure called the Certificate Procedure for the recovery of various dues and demands of Government. This part of the law has been repealed and dealt with separately in Act VII (B.C.) of 1880.

By Act II (B.C.) of 1871 certain errors in section 11 of Act VII (B.C.) of 1868 were corrected.

By Act I (B C.) of 1875 provision was made for the realization of arrears in Government estates This Act was repealed by Act VII (B.C.) of 1880, the Public Demands Recovery Act, which was, so far as consistent with its tenor, to be construed as one with Act XI of 1859.

3. Certain other Acts have also been passed, parts of which have affected the Revenue Sale Law.

By sections 69—74 of Act VII (B.C.) of 1876 (the Land Registration Act) material additions were made to the Sale Law with regard to the opening of separate accounts in respect of shares and the procedure to be followed in opening and closing such accounts.

By section 96 of Act VIII (B.C.) of 1876 (the Partition Act) power was given to a Collector to register specially, according to section 42 of Act XI of 1859, a rent-free tenure created under the former Act

The Court of Wards Act, IX (B C.) of 1879, as amended by Act III (B.C.) of 1881, repealed the greater portion of section 17 of Act XI of 1889, and substituted some changes in respect to the exemption from sale of estates under the management of the Court and estates the property of minors.

4. Besides these amending Acts and sections of other Acts, there have been some decisions of the High Court on portions of the Sale Law; and various circulars have been issued by Executive authority on points where explanation of the law and guidance have been required.

5. Instances of inconvenience and difficulty caused by certain provisions of the Sunset Law, as Act XI of 1859 has commonly been called, have accumulated for some years past. Chiefly in consequence of these, the question of amending the Revenue Sale Law, as contained in Act XI of 1859, its amending Acts and other Regulations and Acts, has been under consideration with the Board of Revenue, and more recently with the High Court. The amendments suggested at various times were brought together in 1889, and with the consent of the Government of India, Mr. John Beames, C.S., was placed on special duty for the purpose of preparing a Bill for legislation. The Bill prepared by him was published for information; reports upon it were received and considered; further correspondence has taken place; and a revised Bill has been framed on the results of the prolonged discussion. It is now proposed to repeal all the existing laws and to pass an amending and consolidating Act, embodying such changes as are thought necessary. The object of the proposed legislation is not only to put the law in a more convenient form, but also to introduce such substantial improvements as it seems possible to effect for the convenience of the different classes concerned without impairing the efficiency of the system. It is not proposed to increase the land revenue: it is intended to maintain its safety.

6. The sections of the Bill have been arranged in their natural order so as to correspond with the actual course of events succeeding the occurrence of an arrear of revenue; the Acts and sections of Acts which amended or supplemented the principal Act XI of 1859 have been incorporated in the Bill; the changes now contemplated for the purpose of giving effect to the orders of Government passed on references from the Board, rulings of the High Court, and the suggestions of experienced officers and others who have been consulted, have been introduced in their proper places. The most important of these changes are mentioned in the succeeding paragraphs. The Bill has been divided into Parts.

Part I.—Preliminary.

7. Definitions of the terms "Board," "Commissioner," "incumbrance," "official year," "recorded proprietor," "section," "independent tenure" have been introduced. Some of the definitions in Act VII (B.C.) of 1868 have been slightly altered or expanded: they have all been arranged in alphabetical order in section 3 of the Bill.

Part II.—Proceedings before sale.

8. By section 6 the sanction of the Local Government will be required for the determination of the latest days of payment of arrears of revenue. Hitherto the Board of Revenue have had the power to fix these dates, but in practice the orders of Government have always been taken.

9. Hitherto also by section 5 of Act XI of 1859, special notifications (to be issued not less than 15 days before the latest days of payment) were required before sales could take place on account of arrears of four descriptions. By section 8 of the Bill such notifications will now be required only in the case of arrears of certain estates, viz., those (1) under attachment by order of any judicial authority, (2) managed by the Collector according to order of any judicial authority. Recovery of the arrears of other descriptions now omitted from this section is effected by the Certificate Procedure under the Public Demands Recovery Act.

10. It has been provided by sections 10-12 of the Bill that, where notifications of sales are issued, notices of the date of the sale shall be served at the same time with certain details locally on the recorded proprietors; that the chaukidar and a member of the chaukidari panchayat of the village shall co-operate with the serving officer and certify to the service of the notice; that any person interested in an estate in any capacity may register his name and address in the Collectorate, and thereby become entitled to receive notice of the date of sale by registered letter. No sale is to be vitiated by non-receipt of the letter, if it be proved that it has been duly registered and posted. The object of these provisions is to meet as far as possible the wishes of the zamindars and the High Court that recorded proprietors should really receive notice of the date of sale before their estates are sold. Sections 11 and 14 will afford considerable protection to registered tenure-holders.

11. By section 18 of Act XI of 1859, a Collector is authorized to use his discretion, at any time before the sale of an estate shall have commenced, to exempt such estate from sale, but the section contains no instructions for the guidance of Collectors in the exercise of their discretion. The orders of the Board and Government issued from time to time have inculcated leniency, but the discretion allowed has necessarily been exercised without uniformity; so that landed proprietors have been left in uncertainty and Collectors exposed to an embarrassing responsibility and the risk of errors and reprimands. It is considered desirable to leave no discretionary power to Collectors, and to fix exactly by law the rights of Government and of the proprietors who desire to save their estates from sale. It has accordingly been provided by sections 14 and 15 of the Bill that arrears are to be received by a Collector after the latest days of payment (fixed under section 6 of the Bill) up to the day preceding the day fixed for the sale, on payment by the defaulting recorded proprietor of all Government dues, interest on the arrear of revenue, and a penalty graduated according to the delay in payment (between the latest day of payment and the day before the sale day) up to one-fifth of the arrears, with certain provisos limiting the penalty in the cases of very large and very small estates. Default will not, as at present, be liable to be followed invariably by the extreme measure of sale, but will involve in the first instance only some additional expense. In allowing the right of payment later than the fixed latest days of payment, it becomes necessary to charge interest on the arrear. This entails the repeal of the surviving section of Act XII of 1841, which prohibited the demand of interest or penalty upon any arrear of land revenue. The Collector is to have no power to receive any payment on the sale day.

Part III.—Protection and exemption from sale.

12. It has been provided in section 17 of the Bill that when a recorded proprietor, in order to save an estate from sale owing to default of his co-sharers, pays revenue and other sums in excess of the amount proportionate to his recorded interest, he may move the Collector to recover the excess payment from his co-sharers by the Certificate Procedure. This section has been adapted from section 49 of Act IX (B.C.) of 1880, the Cess Act, and admitted at the instance of the Eastern Bengal Landholders' Association.

13. In section 22 of the Bill, section 70 of Act VII (B.C.) of 1876, the Land Registration Act, has been introduced, providing for the case of a proprietor of an undivided interest held in common tenancy in any specific portion of an estate who wishes to open a separate account for the payment of his land revenue. The object is to bring together in one Act all the law about separate accounts. It has also been provided in section 25, on the analogy of section 11 of the Partition Act (VIII (B.C.) of 1876) that no separate account is to be opened in respect of an incorrect share, or of any share (or whereby any residuary share would be formed) bearing revenue less than Rs. 10. Much practical inconvenience has been found to arise from opening separate accounts for extremely small shares.

14. Other sections, viz., 27 and 28, have been adopted from the Land Registration Act to provide for the closing of a separate account which no longer corresponds with the character and extent of interest held by the proprietor and for re-opening it correctly. Power is also now taken by section 29 to enable a Collector to close *suo motu* a separate account, of the incorrectness of which he becomes aware. It has been found by experience to be desirable that the Collector should possess such a power.

15 With a view to make Part III of the Bill complete, the sections of the Court of Wards' Acts which refer (1) to the exemption of estates from sale for arrears accruing (*b*) to the recovery of arrears which have accrued, during the management of the estate by the Court of Wards, and other cognate sections of those Acts, have been incorporated as Chapter III. It is considered that this portion of the law belongs more strictly to an Act

concerning sales than to one concerning Wards, as the action which it prescribes is taken by the Collector in the Revenue Sale Department of his office and not in the Wards' Department.

Part IV.—Sales.

16. The Collector is to be the only officer authorised by section 41 to hold sales for arrears of revenue. This is now the ordinary practice.

17. Section 43 provides that, before a sale for arrears is held, all the notifications and returns of notices required by law to be issued are to be laid before the Collector (or a Deputy Collector specially empowered in this behalf), who is to satisfy himself that they have been duly issued, and to record an attestation proceeding to that effect, and, if dissatisfied, to postpone the sale and issue fresh notifications and notices By section 59 a certified copy of this attestation proceeding is to be given to the auction-purchaser with the certificate of title, and this certificate and attestation proceeding are to be conclusive evidence that all notices and notifications have been duly carried out.

The object of these provisions is to protect a sale from being upset on the grounds of any omission, informality or irregularity as regards the serving or posting of any notification or notice. In the case of Lala Mobarak Lal *vs.* Secretary of State, XI I. L. R., Cal., p. 200, it was held that, in a case where a sale had been held less than 30 days from the date of affixing the notice prescribed by section 6 of Act XI of 1859, such sale might be set aside, notwithstanding the limitations laid down by section 33 of that Act. The irregularity, it was held, was not of such a nature as could be cured by section 8 of Act VII (B C.) of 1868 (which provided that a purchaser's title is not to be impeached or affected by any omission, informality or irregularity as regards the serving or posting of any notice connected with the sale), and that the sale was in consequence not a sale under Act XI at all, so that there was no power under Act XI of 1859 or its subsidiary Acts to prevent such a sale from being set aside. It is intended by these provisions to make secure the titles of auction-purchasers. It is believed that in most cases of the kind the errors are caused by mistake and oversight on the part of the subordinate ministerial officers entrusted with the issue of such notices. It is expected that the personal inspection required by the attestation proceeding will ensure the careful observance of the law regarding notices and notifications.

18. It is provided by section 49 that an application may be made by any person interested in an estate and injuriously affected by its sale to the Collector to annul a sale on the ground of material irregularity in the service of any of the notifications or notices, and of substantial injury caused thereby. Hitherto there has been no legal right of moving a Collector to set aside a sale.

By section 50 an appeal against a Collector's refusal to annul a sale may be made to the Commissioner, who may annul it on the ground of substantial injury only. The Commissioner's order on such appeal will be final, as it now is under section 25 of Act XI of 1859; but the right of representation to the Board on the ground of hardship or injustice caused by the sale is maintained by section 52. This right must be exercised within 30 days of the sale.

19. A recorded proprietor of an estate sold for arrears is, at the suggestion of the High Court, to be given the right by section 54 to redeem his estate within a given time by applying to the Collector and depositing all Government dues, and a higher penalty than that required by section 15 to entitle him before sale to exemption from sale. The principle involved in this section has quite recently been approved in the Supreme Legislative Council by the passing into law of Act V of 1894, "to amend the Code of Civil Procedure," by which a judgment-debtor is enabled to redeem his property after sale, on payment of a penalty to compensate the purchaser. This right of redemption and a high standard of efficiency in the service of notices are the two conditions precedent which the High Court consider necessary before the right of contesting land revenue sales in the Civil Courts can be barred.

20. The object of section 55 is to debar the Civil Courts, as suggested by the High Court, from entertaining a suit to annul a sale for arrears of land revenue. It is thought undesirable that persons entitled to appeal against sales should be able to have recourse to two costly series of litigation—one before the Revenue authorities, the other in the Civil Courts. This section is framed to carry out in comprehensive terms the High Court's suggestion that in cases of claims for arrears of land revenue all recourse to the Civil Courts should be barred, if certain precautions are taken.

21. By section 57 of the Bill an auction-purchaser is required to apply to the Collector and to pay the stamp duty required by law before he is entitled to receive a certificate of title: he is also required to register his certificate to secure his title. After the certificate has been granted, the transfer will be notified by the Collector, and possession is to be given. The procedure under section 58 has been assimilated to that of the Civil Procedure Code, sections 316, 318 and 319, for giving possession of immovable property in execution of a decree. The objects of these sections are to secure the payment of the stamp duty under Article 16, Schedule I of the Stamp Act (I of 1879) which has been constantly evaded by purchasers neglecting to take out certificates of title, and to clear up doubts which have arisen regarding the mode of delivery of possession. It is intended to indicate that the Collector is not to be required to give possession by metes and bounds, *i.e.*, by the ascertainment of the actual boundaries of an estate and placing purchasers in actual possession, as it has sometimes been considered, but wrongly, to be his duty to do.

22. The Collector is empowered under section 61, when application for the residue of the purchase-money (sometimes called also the surplus sale proceeds) is made by any one who is

not a recorded proprietor, to fix a day and summon objectors and refer them to the Civil Court. It has been considered that a Collector should not be concerned with such disputes, as he is not interested in them and they are of a civil nature.

23. Power is taken for Government by section 64, when purchasing at a sale (in the absence of other bids or of bids sufficiently high to cover the arrear) to realize under the Certificate Procedure all arrears still outstanding from the defaulting proprietor and not recovered by the sum paid for the estate. The object of this section is to prevent defaulting proprietors, who may have recourse to the provisions of the law with a view not only to get rid of their estates and possibly to annoy other shareholders, from escaping from the payment of arrears of revenue

Part V.—Rights and liabilities of purchasers.

24. To remove doubts it has been provided by section 65 that an auction-purchaser is to be answerable for all instalments of revenue, and to be entitled to collect rents which may fall due after the latest day of payment of the arrears of revenue on account of which the estate was sold.

The present law (section 30 of Act XI of 1859) contains the word "certified," which has caused inconvenience, as certificates have sometimes not been taken out at all. It is considered advisable to make the purchaser's liability for the Government revenue date from the time when he is declared to be the purchaser, and not to leave it dependent upon his taking out the certificate. It also supplies an omission, as hitherto there has been only provision (section 55 of Act XI of 1859, reproduced in section 72 of the Bill) for defaulting proprietors recovering arrears of rent due up to the latest day of payment, but there has been no provision for auction-purchasers collecting rents due after the latest day of payment.

Part VI.—Protection of tenures.

25. The provisions of sections 38 to 45, Act XI of 1859 for common and special registry of talukdari and other similar tenures, created since the time of settlement and held immediately by the proprietors of estates, and of farms for terms of years, are to be extended by sections 73—83 to tenures of all descriptions, without limitation of the period within which application for their registry may be made, and at a reduced fee of Rs. 2 in each case. It is made a condition that, where the tenures have been created by deeds, such deeds shall have been duly registered, and where not created by deeds, or where the deeds have been lost, proof must be given that the tenure has been in existence for 12 years. It has long been felt that adequate protection against annulment by a purchaser at a sale for arrears of revenue was not secured to tenures by the sale laws, and various expedients have from time to time been suggested and tried. Before 1859 a system of double sales was in force, whereby an estate might be put up to sale in the first instance subject to all incumbrances whenever necessary; in the event of such sale not producing a sufficient amount to cover the arrear, it was not to be confirmed, but a second sale with power to annul incumbrances was to take place. The revival of this system of double sales was proposed, but dropped as open to various objections: *inter alia* it would be opposed by the zamindars as tending to a general reduction of the value of zamindari property. If, then, on the one hand, estates are to be made over to purchasers free of all incumbrances of doubtful validity, and on the other hand adequate protection is to be secured to *bonâ-fide* tenants of all classes, so that their interests may not be jeopardized through no fault of their own, the only resource seems to lie in an extension of the principle of registry. In section 79 a section has been adopted from section 96 of Act VIII (B C.) of 1876 (the Partition Act) to provide for the special registration of a rent-free tenure created in an estate under partition.

Part VII.—Miscellaneous provisions.

26. By section 86 a Collector is to be empowered to refer certain cases arising from sections specified to his subordinates for hearing and determination, subject to rights of appeal, and by section 87 the necessary power has been conferred on certain Revenue officers to take evidence in such cases.

27. Several Schedules are appended to the Bill. In the first the laws and sections to be repealed are indicated; in the fourth a revised table of fees is prescribed.

The 7th March 1894. C. E. BUCKLAND.

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DRAFT

OF A

Bill to amend the Public Demands Recovery Act, 1880.

(Enclosure to Bengal Government's letter No. 1382, dated 7th March 1894.)

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SCHEDULE—FORMS 1-5.

DRAFT

OF A

BILL

To amend the Public Demands Recovery Act, 1880.

WHEREAS it is expedient to amend the law for the recovery of dues and debts demandable by Public Officers; It is hereby enacted as follows:—

Bengal Act VII of 1880, section 1.

Short title.

1. (*1*) This Act may be called the Public Demands Recovery Act, 189 .

Extent.

(*2*) It extends to all the territories for the time being administered by the Lieutenant-Governor of Bengal.

Commencement.

(*3*) It shall come into force from the date on which it may be published in the Calcutta Gazette with the assent of the Governor-General.

Ditto, section 2.

Construction of this Act.

2. The powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by any Act now being in force, for the recovery of any due, debt or demand to which the provisions of this Act are applicable.

Ditto, section 3

Repeal of Acts.

3. (*1*) Act VII (B.C.) of 1880 and Act I (B.C.) of 1891 are hereby repealed; but this repeal shall not affect—

(*a*) the past operation of the Act hereby repealed, nor anything duly done or suffered thereunder;

(*b*) any liability created under the Act hereby repealed.

Certificate under Act VII (B.C.) of 1880 to be enforced under this Act.

(*2*) Every certificate made under the enactment hereby repealed may be enforced under the provisions of this Act.

(*3*) And where in any Act, Notification or written Instrument passed, issued or made prior to the passing of this Act reference is made to Act VII (B.C.) of 1868 or Act VII (B.C.) of 1880, such reference shall, so far as it may be practicable, be taken to be made to the corresponding provisions of this Act.

Ditto, section 4.

Definitions.

4. In this Act, unless there be something repugnant in the subject or context,—

Now.

(*1*) "Collector" means (*a*) within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, the Collector of Calcutta; (*b*) without those limits, the Collector of a district, and includes subject to the provisions of section thirty-one, any officer specially appointed by the Local Government to perform the functions of a Collector under this Act, and any officer in charge of a subdivision of a district whom the Collector of

such district, with the sanction of the Commissioner of the Division, authorizes to perform such functions as aforesaid.

(2) "Collector of the district" means the officer in charge of the revenue administration of a district:

(3) "section" means a section of this Act.

Bengal Act VII of 1880, section 5.

5. In the following cases, that is to say—

When an estate or tenure has been sold for its own arrears, and the sale proceeds are insufficient to liquidate the same; or

(1) when, under the provisions of the Revenue Sale Act, 189 , or any law for the time being in force, an estate, share of an estate or an independent tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale proceeds may under the aforesaid provisions be applied;

When arrears of revenue due from a farmer are not paid on latest date of payment;

(2) when arrears of revenue due from a farmer on account of an estate held by him in farm are not paid on the latest day of payment fixed under the provisions of section six of the Revenue Sale Act, 189 ;

The Collector may make a certificate.

the Collector may make under his hand, and in Form No. 1 in the schedule hereto annexed, a certificate of the amount of arrears so remaining unpaid, and may cause the same to be filed in his office.

Ditto, section 6.

6. (1) Subject to the provisions of this Act, every certificate made under the provisions of the last preceding section shall, as regards the remedies for enforcing the same and so far only, have the force and effect of a decree of a Civil Court, and the Secretary of State for India in Council shall be deemed to be the decree-holder, and the person therein named as debtor shall be deemed to be the judgment-debtor

Such certificate shall have the force and effect of a Civil Court decree as regards the remedies for enforcing it.

Judgment-debtor may bring a suit in the Civil Court to contest his liability, if he has deposited the amount of the certificate.

(2) Such judgment-debtor may at any time within one year after the service upon him of such notice as is mentioned in section ten, bring a suit in the Civil Court to have the said certificate cancelled on the ground that the arrears stated therein were not due by him; but no such suit shall be entertained unless such judgment-debtor has paid such arrears to the Collector within one month after being served with the said notice, or, in any case in which he has filed a petition of objection under section twelve, then within fifteen days after such petition has been heard and determined.

Certificate when to become absolute.

(3) If no such suit is instituted within the said period of one year, or if any such suit having been so instituted is decided against such judgment-debtor, such certificate shall become absolute and shall have to all intents and purposes the effect of a final decree of a Civil Court.

Bengal Act VII of 1880, section 7.

When any arrear of public demand is unpaid by the person liable to pay the same.

7. When any arrears of the following public demands are unpaid by the person liable to pay the same, that is to say—

(a) any sum of money which by any law for the time being in force is declared to be recoverable or realizable as an arrear of revenue or land revenue, or by the process prescribed for the recovery of arrears of revenue or of the public or Government revenue;

(b) any sum of money due from the sureties of a farmer in respect of the revenue of the estate farmed by him;

(c) any such demand, money, fee, duty, arrear, fine or costs as is mentioned in the following sections of the following Acts passed by the Lieutenant-Governor of Bengal in Council:—

Act VIII of 1862, section 9.

Act IV of 1875, section 1.

Act V of 1875, section 57.

Act III of 1876, sections 42, 73 and 85.

Act VII of 1876, section 82.

Act VIII of 1876, section 138.

Act VII of 1878, section 36.

Act IX of 1879, sections 46, 57, 58A, 63 and 65A.

Act VI of 1880, section 26, clause 4, and section 38.

Act IX of 1880, sections 49 and 98.

Act II of 1882, section 70.

Act I of 1885, section 12.

or in the following sections of the following Acts passed by the Governor-General of India in Council:—

New.

Act XIX of 1883, section 7.

Act XII of 1884, section 5.

Act VIII of 1885, section 114;

(d) in the case of a person to whom the collection of tolls has been farmed under the provisions of section eight of Bengal Act V of 1864, or of the sureties of such person—any sum of money due in respect of such farm;

(e) any arrears of revenue, or rent payable to the Secretary of State for India in Council from any raiyat or from any person holding any interest in land, pasturage, forest rights, fisheries, and the like, whether such interest is or is not transferable; together with interest thereon allowed by any law for the time being in force;

(f) in the case of property which, under the provisions of any law for the time being in force, has been taken under the charge of, or is managed by, the Court of Wards or the Revenue Authorities on behalf of a private individual—any arrears of rent or of other demands recoverable as rent,

whether such arrears became due before or after the management devolved upon such Court or such Authorities :

Provided that this clause shall not apply to any arrears of rent at an enhanced rate, unless such enhancement has been made—

by contract under the provisions of section twenty-nine of Act VIII of 1885, or

by decree of Court under the provisions of sections thirty-one, thirty-two, thirty-three or thirty-four of the said Act, or

by registered or other agreement under the provisions of sections forty-three, forty-six or one hundred and eighty of the said Act, or

under the provisions of section one hundred and four of the said Act.

(*g*) any sum payable to a Public Officer of Government in respect of which the person liable to pay the same has agreed by a written instrument duly registered that it shall be recoverable under the provisions of this Act.

(*h*) any fee, duty, tax or other demand, which by any Act passed hereafter shall be declared to be recoverable under the provisions of this Act;

the Collector may make under his hand, and in Form No. 2 in the schedule hereto annexed, a certificate of the amount of such arrears so remaining unpaid, and may cause the same to be filed in his office :

The Collector may make a certificate of the unpaid demand.

Provided that no such certificate shall be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force: or in case of any demand involving a question of right or title.

Provided also that a certificate filed under clause (*f*) of this section shall not cease to be in force by reason of the release of the estate from the charge of the Court of Wards.

Bengal Act VII of 1880, section 3.

Effect of certificate.

8. (*1*) Subject to the provisions of this Act, every certificate made under the last preceding section shall, as regards the remedies for enforcing the same, and so far only, have the force and effect of a decree of a Civil Court. In the cases other than the case mentioned in clause (*f*) of the said section, the Secretary of State for India in Council, and in the said case specified in clause (*f*) the private individual therein mentioned, or, if such private individual be a Minor, Lunatic or Ward of Court, then such Minor, Lunatic, or Ward of Court by his next friend, shall be deemed to be the decree-holder, and in all the cases mentioned the person therein named as debtor shall be deemed to be the judgment-debtor.

New—adopted from Bengal Act IX of 1880, section 49.

(*2*) When a certificate has been made under the provisions of section seventeen of the Revenue Sale Act, 189 , the person on whose application the certificate has been made shall be deemed to be the decree-holder, and all proceedings taken by the Collector under this Act shall be taken at the instance, at the cost, and on the responsibility of such decree-holder and not otherwise.

Bengal Act VII of 1880, section 9.

In case of arrears of public demand payable to Officer other than Collector, such Officer may make requisition to Collector.

9. (1) When any arrear of any of the public demands specified in section seven is unpaid by any person liable to pay such public demand to a Public Officer other than a Collector, or when any such demand as is specified in clause (f) of the said section is unpaid by any person liable to pay the same to a Manager appointed by the Court of Wards, such Officer or such Manager may make to the Collector of the district, in which such person resides, or in which such demand is payable, or (if the Collector of the district shall so direct) to a Collector, a requisition in writing in Form No. 3 in the schedule hereto annexed:

Provided that no such requisition may be made in respect of any such demand, the recovery of which is barred by any law of limitation for the time being in force.

Such requisition given by a Manager to be verified and stamped as a plaint.

(2) Every such requisition given by a Manager shall be verified by such Manager in accordance with the provisions of the Code of Civil Procedure as to the verification of plaints, and there shall be payable in respect thereof a court-fee of the same amount as is payable under the Court-fees' Act for the time being in force in respect of a plaint for the recovery of a sum of money equal to that stated in such requisition.

The Collector may on receipt of such requisition make a certificate.

(3) On receipt of such requisition, such Collector, if satisfied that such demand is justly recoverable, may make under his hand and in Form No. 2 in the schedule hereto annexed, a certificate of the amount of such arrears so remaining unpaid, together with the cost of any court-fee paid in respect of such requisition under clause (2) of this section, and shall cause the same to be filed in his office.

(4) The provisions of the last preceding section shall apply to every such certificate.

Ditto, section 10.

When certificate filed notice to be given to judgment-debtor.

10. (1) When a certificate has been filed in the office of a Collector under the provisions of sections five, seven or nine, such Collector shall issue to the judgment-debtor a copy of such certificate and a notice in Form No. 4 in the schedule hereto annexed.

Upon service of notice, certificate to bind immovable property of judgment-debtor

(2) From and after the service of such notice, such certificate shall bind all immovable property of such judgment-debtor situated within the jurisdiction of such Collector in the same manner and with like effect as if such immovable property had been attached under the provisions of section two hundred and seventy-four of the Code of Civil Procedure.

Copy of certificate may be sent to Collector of another district to be filed in his office, and upon its being filed, it shall bind immovable property situate in such district.

(3) A copy of such certificate may be transmitted by post under the provisions of section two hundred and twenty-three of the Code of Civil Procedure to any other Collector for the purpose of being filed in his office, and as soon as it is so filed, such certificate shall, if the aforesaid notice

has been served, bind in like manner all immovable property of such judgment-debtor situated within the jurisdiction of such last-mentioned Collector.

Movable property of person against whom certificate has been made may be attached at any time, if Collector satisfied that such person is likely to conceal, remove, or dispose of such property.

11. (*1*) If in any case other than the case specified in clause (*f*) of section seven, the Collector is satisfied that any person against whom a certificate has been filed under the provisions of sections five, seven or nine is likely to conceal, or remove, or dispose of the whole or any part of his movable property, and that the realization of the amount of such certificate will in consequence be delayed or obstructed, he may at any time after making such certificate direct an attachment of the whole or any part of the movable property of such person.

Bengal Act VII of 1880, section 11.

(*2*) Such attachment shall be made in the manner provided in the Code of Civil Procedure for attaching movable property, and subject to the provisions of section two hundred and sixty-six of the same Code.

(*3*) Such property may be sold for the purpose of satisfying such certificate, if no petition of objection is filed under the next succeeding section, or if any such petition is filed, then as soon as it has been heard and determined.

Any person served with notice under section 10 may file a petition of objection.

12. (*1*) If a judgment-debtor who has been served with a notice under section ten denies his liability to pay the whole or any part of the amount for which such certificate has been made and filed against him, he may at any time within thirty days after service of such notice, or, where no such notice has been duly served, within thirty days after the execution of any process for enforcing such certificate, file a petition denying his liability as aforesaid, before the Collector by whom such certificate has been made.

Ditto, section 12.

(*2*) Such petition shall be in, or as nearly as possible in, Form No. 5 in the schedule hereto annexed:

Provided that no such petition shall be entertained unless at the same time the judgment-debtor deposits with the Collector the full amount of the sum entered in the certificate.

New.

Day to be fixed for hearing such petition Collector to determine the liability of the petitioner

13 (*1*) The Collector shall fix a day for hearing any such petition so filed, and upon such day or any subsequent day to which such hearing may be adjourned, shall determine whether such petitioner is liable for the whole or any part of the amount for which such certificate was made, and may set aside or modify or vary the certificate accordingly.

Bengal Act VII of 1880, section 13.

Certain provisions of the Code of Civil Procedure to apply to the inquiry

(*2*) Every such Collector shall, for the purpose of hearing any such petition and determining as aforesaid, exercise all or any of the powers of a Civil Court in respect of summoning, causing the attendance of, and examining witnesses, and in respect of causing the production of documents; and the provisions of the Code of Civil Procedure applicable to these matters shall apply to a Collector exercising these powers:

Now.

Provided that, if in the opinion of the Collector, the petition discloses a case which could be more suitably tried by a Civil Court, he may refer the petitioner thereto.

Bengal Act VII of 1880, section 14.

Collector may award costs against petitioner.

14. (*1*) The Collector shall have full power to direct that the costs or any part of the costs of such petition and of the hearing thereof shall be paid by the petitioner, or if his finding is in favour of the petitioner, then by the party at whose instance the certificate was issued, whether Government or the Court of Wards.

Costs how to be realized.

(*2*) In any case in which a Collector directs the payment of such costs by any such petitioner, the amount thereof shall be added to the amount entered in the certificate, and shall be recoverable as if the same had been originally entered therein.

Ditto, section 8 (*b*).

Judgment-debtor may bring a suit in the Civil Court to contest the certificate.

15. (*1*) The person deemed to be the judgment-debtor under the provisions of section eight may, at any time within one year from the date of the determination of the objection mentioned in section thirteen, bring a suit in the Civil Court to contest his liability to pay the amount stated in the said certificate, and to have such certificate cancelled; but no such suit shall be entertained unless such judgment-debtor has stated in a petition presented to the Collector under section twelve the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition as aforesaid, he can satisfy the Civil Court that there was good reason for such omission.

Certificate when absolute.

(*2*) If no such suit is instituted within the said period of one year, or if any such suit having been instituted is decided against such judgment-debtor, such certificate shall become absolute, and shall have to all intents and purposes the same force and effect as a final decree of a Civil Court.

Ditto, section 8 (*b*).

Grounds of cancelment of certificate by Civil Court.

16. (*1*) No certificate duly made under the provisions of this Act shall be cancelled by a Civil Court otherwise than on one or more of the following grounds, that is to say—

(*a*) that the amount stated in the certificate was actually paid or discharged before the making of such certificate;

(*b*) that no part of the amount stated in the certificate was due by the judgment-debtor under the certificate.

(*2*) Nothing herein contained shall be construed to interfere with the ordinary original jurisdiction of the High Court at Fort William in Bengal, or with the jurisdiction of the Calcutta Court of Small Causes.

Ditto, section 15.

Collector may refer petition for hearing to Deputy Collector, &c.

17. (*1*) The Collector of a district or a Collector in charge of a subdivision may, by a general or special order, refer to any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to him, any petition or petitions filed

under section twelve, and such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner shall hear and determine such petitions accordingly.

(2) The provisions of sections thirteen and fourteen shall be applicable to any such Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner to whom any such petitions have been so referred.

Bengal Act VII of 1880, section 16.

Appeal from Assistant or Deputy Collector, Assistant Commissioner, &c., to Collector, and from Collector to Commissioner.

18. (1) An appeal from any order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner may be preferred to the Collector of the district within fifteen days, and an appeal from any original order of a Collector may, subject to the provisions of this Act, be preferred to the Commissioner within thirty days after the making of such order respectively.

New.

Transfer of appeals.

(2) It shall be lawful for the Collector of the district, with the sanction of the Local Government, to transfer such appeals, either by general or special order, to any Collector subordinate to him for hearing.

Stay of execution.

(3) Pending the decision of such appeal, execution may be stayed if the Appellate Authority so direct, but not otherwise:

Provided that, when the Local Government shall so direct, appeals from the original orders of a Collector who is not the Collector of the district may be preferred to the Collector of the district. Such appeals shall be preferred within fifteen days after the making of such order.

(4) In each case under this section, the day on which the order was passed shall be reckoned as the first day of the period.

Bengal Act VII of 1880, section 17.

Power of revision.

19. There shall no appeal, as of right, lie from any order of a Collector passed on appeal from an order of an Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner; but, subject to the provisions of this Act, the Commissioner and the Collector of the district, if so empowered by the Local Government, may in any case in which they think fit revise any order passed by a Collector, Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner.

New.

Application may be made for annulment of sale on deposit of amount stated in certificate, auction-price and penalty.

20. (1) The person deemed to be the judgment-debtor under the provisions of section eight may, at any time within thirty days after any immovable property is sold in execution of a certificate under section twenty-one, apply to the Collector to cancel the certificate and set aside the sale on his depositing—

(a) the amount stated in the certificate, together with costs, and with the interest thereon at the rate of twelve per centum per annum calculated from the date when the certificate was filed up to the date when the deposit is made;

(b) the auction price for which the property was sold;

(c) as penalty a sum equal to one-tenth of the auction price.

(*d*) all outstanding charges payable to the Collector by the judgment-debtor under any Act for the time being in force.

(*2*) If such a deposit is made within thirty days, the Collector shall pass an order cancelling the certificate and setting aside the sale.

(*3*) In the event of a sale being annulled by an order of the Collector under this section, the auction price for which the immovable property was sold, together with the penalty specified in clause (*c*), shall be paid to the purchaser by the Collector.

(*4*) An order made by the Collector under this section shall be final.

Bengal Act VII of 1880, section 18.

Certificate may be enforced after one month from notice, or when petition of objection disposed of.

21. Every certificate made under the provisions of sections five, seven or nine may be enforced and executed with interest at the rate of six per centum per annum up to the date of realization and costs upon the expiry of one month after service of the notice mentioned in section ten, or when any such petition as is mentioned in section twelve has been filed, then as soon as such petition has been heard and determined:

New.

Limitation.

Applications for certificates for the recovery of arrears of rent shall be made within three years from the last day of the Bengali year in which the arrear fell due, where that year prevails, and the last day of the month of Jeyt of the Amli or Fasli year in which the arrear fell due, where either of those years prevails. In respect of other applications, the ordinary law of limitation shall hold good.

Bengal Act VII of 1880, section 19, cl. 1.

Certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money.

22. (*1*) Such certificate may be so enforced and executed by all or any of the ways and means mentioned and provided in and by the Code of Civil Procedure for the enforcement and execution of decrees for money.

(*2*) The practice and procedure provided by the hereinafter specified sections of the said Code of Civil Procedure shall apply to every execution issued to enforce such certificate and realize the amount recoverable thereunder, namely—

(*a*) sections 223, 224, 225, 226 and 228, concerning the execution of decrees out of the jurisdiction of the court by which they were passed;

(*b*) section 234, concerning execution of decree against legal representative;

(*c*) section 235, concerning contents of application for execution of decree;

(*d*) sections 245, 245A, 245B and 254, concerning the mode of decrees;

(*e*) sections 266, 267, 269, 271, 272, 274 and 284, concerning attachment of property;

(*f*) sections 278, 279, 280, 281 and 283, concerning claims to attached property;

(*g*) sections 286, 287, 288, 289, 290, 291, 292, 293 and 294, concerning sales in execution of decrees;

(*h*) sections 296, 297, 298, 299, 300, concerning sale and delivery of moveable property;

(*i*) sections 306, 307, 308, 309, 314, 316, 317, 318 and 319, concerning sale and delivery of immovable property;

(*j*) sections 311, 312, 313 and 315, concerning applications to set aside sales;

(*k*) sections 320, 321, 322, 322B, 322C, 322D, 323, 324, 324A, 325, 325A, 325B, 325C, 326 and 327, concerning the transfer to the Collector of the execution of certain decrees and the procedure to be followed in such cases;

(*l*) sections 328, 329, 330, 331, 332, 333, 334 and 335, concerning resistance to execution;

(*m*) sections 336, 337, 337A, 338, 339, 340, 341, 342 and 343, concerning arrest and imprisonment;

(*n*) the whole of the sections contained in chapter XX, concerning insolvent judgment-debtors;

(*o*) section 588, clauses (16) and (17), concerning appeals from orders.

Powers by whom to be exercised.

23. (*1*) In enforcing and executing such certificate, all the duties, powers and authorities by the said Code imposed or conferred on the Court shall be exercised by the Collector in whose office any such certificate, or any copy thereof transmitted for execution under the provisions of section 223 of the said Code, has been filed.

Bengal Act VII of 1880, section 19 cl. (*2*)

(*2*) The power conferred on the High Court of making rules for the guidance of the Courts in the exercise of their duties under section 287 of the Civil Procedure Code shall, in respect of proceedings under this Act, be exercised by the Board of Revenue.

(*3*) All such rules shall be published in the Calcutta Gazette, and shall thereupon have the force of law.

(*4*) Subject to the control of the Collector of the district, and save and except in respect of the provisions relating to insolvent judgment-debtors, any of the said duties, powers and authorities may be exercised by any Assistant Collector, Deputy Collector, Assistant Commissioner or Extra Assistant Commissioner subordinate to such Collector.

Bengal Act VII of 1880, section 19, cl. (3).

Sale of immovable property may be set aside, if certificate is set aside by a competent Court. Proviso.

24. (*1*) If any immovable property is sold in execution of a certificate under the provisions of section twenty-one, and if such certificate is subsequently set aside by a competent Court, such Court may set aside such sale of such immovable property, and in any case in which such sale is so set aside, such Court shall direct that the amount of the purchase-money be refunded to the purchaser with or without interest, as such Court thinks fit.

Ditto, section 20

(*2*) Such order shall have the force of a decree, and application for the execution of such decree shall be made within six months after the date thereof, otherwise the party in whose favour such order was passed shall lose all benefit therefrom:

Provided that no such sale shall be so set aside unless such purchaser has been made or added as a party to the suit brought to set aside such certificate.

(*3*) The provisions of this section shall not apply to a sale set aside under section twenty.

Bengal Act VII of 1880, section 21.

Register of certificates to be kept in Collector's office and to be open to inspection on payment of fee of eight annas.

25. (*1*) Every Collector shall cause to be kept in his office a register in such form as may from time to time be prescribed by the Board of Revenue, and shall cause to be entered in such register the particulars of every certificate made under this Act, which, or a copy of which, has been filed in his office.

(*2*) Such register shall be open during office hours to the inspection of any one desiring to inspect the same, and a fee of eight annas, or such fee not exceeding eight annas as the Board of Revenue may prescribe, shall be chargeable for such inspection.

Ditto, section 22 (*a*).

Payment of sum due under a certificate may be made by instalments.

26. (*1*) Payment of the amount due under a certificate may be made by instalments, if the Collector who made such certificate so direct.

Payment of instalments to be entered in register.

(*2*) The payment of any instalment shall be entered in the register mentioned in the last preceding section.

Ditto, section 22 (*b*).

When total amount satisfied, Collector to enter satisfaction on certificate and in register.

27. When the total amount due under a certificate has been paid and satisfied, the Collector in whose office such certificate was originally filed shall enter satisfaction upon such certificate under his hand and signature; and shall cause the same to be entered in the register mentioned in section twenty-five.

Ditto, section 22 (*c*).

Collector to communicate satisfaction to other Collector in whose office copy of such certificate has been filed.

28. When a copy of such certificate has been transmitted to another Collector, or when such certificate has been made under the provisions of section nine upon requisition from a Public Officer other than a Collector, or from a Manager appointed by the Court of Wards, such satisfaction shall be communicated to such other Collector or to such Officer, or to such Manager.

Ditto, section 22 (*d*).

Sum levied by Collector to whom copy of certificate sent to be transmitted to Collector who made certificate.

29. When a sum has been levied or received by a Collector in respect of a certificate, a copy of which has been transmitted to him and filed in his office, such Collector shall send such sum to the office in which such certificate was originally made.

Ditto, section 23.

Certain officers to be deemed to be acting judicially in the discharge of their duties under this Act.

30. Every Collector of a district, Collector, Assistant Collector, Deputy Collector, Assistant Commissioner and Extra Assistant Commissioner, and every such Public Officer as is mentioned in section nine shall, in the discharge of his functions under this Act, be deemed to be a person acting judicially within the meaning of Act XVIII of 1850 passed by the Governor-General of India in Council.

Ditto, section 24.

Collectors, &c., to be subject to the supervision and control of Commissioners and Board in discharge of their duties under this Act.

31. All Collectors of districts, Collectors, Assistant Collectors, Deputy Collectors, Assistant Commissioners and Extra Assistant Commissioners shall, in the performance of their

duties under this Act, be subject to the general supervision and control of the Commissioners of Divisions and the Board of Revenue; and no officer, although specially appointed to perform the functions of a Collector under this Act, shall exercise the appellate powers of a Collector under section eighteen, unless he is expressly authorized in that behalf by the said order of the Local Government, and, unless the contrary shall be expressly directed in such order, every officer so specially appointed shall exercise his functions subject to the control of the Collector of the district.

Board's Certificate Procedure Manual, section II, rule 11.

Provisions regarding service of notices.

32. The provisions of sections 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84 and 85 of the Code of Civil Procedure shall be applicable, so far as circumstances permit, to the service of all notices issued under this Act.

New.

SCHEDULE.

Form No. 1.

(*referred to in section* 5.)

Certificate of Arrears of Revenue filed in the Office of the Collector of the district of (*name of district*).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of the Public Demand for which this Certificate is made.	Particulars of Public Demand for which this Certificate is made, and Public Officer [*or* Manager *and* of what estate] to whom due.
1	2	3	4	5

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council from the abovenamed

Dated this day of 18 . A. B.,

Collector of

Form No. 2.

[*referred to in section* 7 *and section* 9, cl. (3).]

Certificate of Arrears of Public Demands filed in the Office of the Collector of the district of (*name of district*).

No. of Certificate.	Name of Debtor.	Address of Debtor.	Amount of arrears of revenue for which this Certificate is made, and period for which such arrears are due.	Estate or tenure for which arrears of revenue are due.
1	2	3	4	5

I hereby certify that the abovementioned sum of Rs. is due to the Secretary of State for India in Council [or to A. B., a Ward of Court, or a Minor, or a Lunatic, by his next friend C. D.] from the above named

Dated this day of 18 . A.B.,
Collector of

FORM No. 3.

[*referred to in section* 9, cl. (*1*).]

REQUISITION.

To the Collector of the district of

Name of Debtor.	Address of Debtor.	Amount of Public Demand for which this requisition is made.	Nature of the Public Demand for which this requisition is made.
1	2	3	4

The above sum of Rs. is due from the said
in respect of
Certified this day of

A. B.
(*Official designation.*)

FORM No. 4.

[*referred to in section* 10.]

NOTICE.

To (*Insert name of judgment-debtor*).

You are hereby informed that a certificate for Rs. due from you on account of has been this day made by me against you under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council, and that such certificate has been filed in this office. If you deny your liability to pay the said sum of Rs. , you may within thirty days show cause why such certificate should not be executed. If you fail to show cause within thirty days, or do not show sufficient cause, such certificate will be executed in the same manner as if it were a decree of a Civil Court for the said sum of Rs. , unless you pay the amount into this office. Until such amount is paid, you are hereby prohibited from alienating your immovable property or any part of it by sale, gift, mortgage, or otherwise.

A copy of the certificate above mentioned is hereto annexed.

Dated this day of 18 . A. B.,
Collector of

FORM No. 5.

[*referred to in section* 12.]

To

THE COLLECTOR OF THE DISTRICT OF

The humble petition of (name of petitioner) of (address).

SHEWETH—

That a certificate No. for the sum of Rs. has been filed against your petitioner in your office under the provisions of section of Act of 1880 passed by the Lieutenant-Governor of Bengal in Council.

That your petitioner respectfully denies his liability to pay the said sum of Rs. (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.), and this for the following reasons :—

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).

STATEMENT OF OBJECTS AND REASONS.

Act VII (B.C.) of 1880 (the Public Demands Recovery Act) was intended to be read as one with Act XI of 1859, the main law for the sale of estates for arrears of revenue. Its section 2 prescribed that "this Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor-General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council." This arrangement, though in accordance with the state of the law since 1868, has been found to give rise to serious practical inconvenience. Before 1868, sums due to Government by individuals could only be realized in the same manner as an arrear of land revenue, that is, by the sale of the defaulter's estate or by the still more tedious and expensive process of a civil suit. When a more summary procedure for the realization of such dues was introduced in 1868, it was treated as supplementary to the old procedure, and the two systems continued, and still to a certain extent continue, to be mixed up together. But now that the Certificate Procedure has been in force for upwards of twenty years and is well known, it has become possible, and will, it is considered, be extremely advantageous, to separate the two processes which have in fact nothing in common and have probably been kept in a state of relation to one another more from the influence of association than for any more valid reason. This Bill is intended to amend and consolidate the Public Demands Recovery Acts, viz, Act VII (B.C.) of 1880 and Act I (B.C.) of 1891, which contain what is commonly called the Certificate Procedure. Separate legislation is in contemplation for the consolidation of the Revenue Sale Law. The two processes, that by which the land revenue due from the proprietors of estates is realized, and that by which a great number of minor demands,—fees, fines, duties, taxes, costs and the like—are recovered from the public in general, will henceforth stand apart from and independent of each other, each having its own Act and its own procedure.

2. In addition to this reason for amending Act VII (B.C.) of 1880, complications have been caused by the wording of certain sections and by omissions to provide for certain contingencies. For instance, the vagueness of the definition of "Collector" in section 4 of the Act gave rise to great difficulty. Though "Collector" was defined no definition was given of Collector of the district." It was at first held that the power of issuing certificates under section 7 of the Act could be exercised by the District Officer only. This resulted in that officer being overburdened with routine work. In 1882 a legal opinion was given to the effect that any officer specially appointed under section 4 was a Collector of the district, and could issue certificates under section 7. This opinion had the effect of placing in the hands of subordinate officers greater powers than had been intended, so as in fact to render them in some respects independent of the District Officer. Act I (B.C.) of 1891 was passed to admit of certificates under section 7 of the Act being issued by officers who were specially appointed Collectors under the Act, and not only by Collectors of districts. This Act will now be repealed, its purport being included in the Bill.

Also a decision of the High Court has put upon a section of the Act an interpretation which it was undoubtedly not intended to bear, and which seriously affects the successful working of the law.

3. In 1889 Mr. John Beames, C.S., was placed on special duty for the purpose of preparing a Bill to amend Act VII (B.C.) of 1880, at the same time that he was preparing a Bill to amend and consolidate the Revenue Sale Law. The Bill framed by him to amend Act VII (B.C.) of 1880 was published and circulated for opinion. Reports on it were received from the High Court and the Board of Revenue, with whom further correspondence has taken place. The Bill as now framed embodies the views of Government as formed upon this discussion.

4. The intention of the law has been that while power to transact the ordinary routine business of the Certificate Procedure should be conferred on Deputy Collectors and other similar officers, the general direction, control and supervision of this as of all other revenue departments should rest solely with the Collector of the district The peculiar arrangement of section 4 of the Act renders it very difficult to make such alterations as will establish a clear distinction between the supervising and controlling "Collector of the district" and the "Collector," a subordinate officer empowered to perform judicial and executive functions, but not vested with the authority of the District Officer, while the latter still retains power to perform all the functions of Collector under the Act, whenever for any reason he may consider it right to do so. The problem is meant to be solved by the insertion in section 4 of the Bill of a new definition, viz, of "Collector of the district," and by making it clear throughout the Act in which cases the Collector of the district is the only officer empowered to act, and in what cases officers specially appointed Collectors may take action. By section 4 (1) of the Bill and section 31 it is provided that specially appointed Collectors are not to exercise appellate powers unless expressly authorized to do so by Government, and then they are still to be subject in the exercise of their functions to the control of the Collector of the district. Provision is made also for the powers of a Collector in charge of a subdivision. The changes introduced by the Bill should remove the uncertainty felt as to the intention of the law, and admit of the employment of subordinate officers on ordinary work, while the powers of control of the District Officer will be preserved.

5. In section 7 of the Bill the list of Acts and sections to which the Certificate Procedure is applicable has been brought up to date by the insertion of the Acts passed since 1880. In

the same section provision is made for the levy of interest allowed by any law on arrears of revenue or rent due to Government. This is in accordance with the principle of the proposed legislation in the case of the Sale Law. There is no reason why a judgment debtor should gain the interest, or the State lose it, on outstanding dues. Similarly, also, as to section 21, the sums entered in certificates are such as in many cases legally bear interest, and it is deemed equitable that this interest, as in the case of a Civil Court decree, together with the costs of execution, should be leviable at a specified rate, together with the principal sum.

The proviso at the end of clause (*f*) of section 7 of the Bill has been remodelled to bring it into accordance with the provisions of the Bengal Tenancy Act, which has rendered the law on the subject of enhancement more definite than it was in 1880.

A proviso has been inserted to prevent a certificate being made in case of any demand involving a question of right or title. The object of this is to limit as much as possible the use of the Certificate Procedure to the case of demands which can be ascertained simply by an examination of the public records under the control of the Collector.

6. By section 8 (2) of the Bill it is intended to give effect to the proposed application of the Certificate Procedure to the case of joint-proprietors of an estate, who, to save the estate from sale, may have paid up the whole amount in arrear. A provision allowing such persons to apply to the Collector to recover the excess payments from their co-sharers by certificate has been inserted in the Revenue Sale Law Bill, and this clause, adopted from the Cess Act, is necessary to complete the procedure.

7. In section 9 (3) of the Bill the opportunity has been taken to carry out a suggestion which was first proposed so long ago as 1881. Words have been inserted to facilitate the recovery from a defaulter of the cost of the court-fees required to be paid by a Manager under clause (2) of this section.

8. By the proviso to section 12 of the Bill the Collector is to be empowered to order that no petition of objection to a certificate shall be entertained unless at the same time the judgment-debtor deposits the full amount of the sum entered in the certificate This is proposed for the Revenue Courts on the analogy of the procedure proposed by the High Court, to the effect that the amount claimed should be deposited in Court as a condition precedent to further action in order to dispute the claim. This proviso makes the deposit demandable not obligatory.

9. In the proviso to section 13 of the Bill power is given to the Collector to refer the petitioner to a Civil Court if the petition of objection discloses a case which could, in his opinion, be more suitably tried by such Court. This has been suggested by the Board of Revenue, and is an idea taken from section 55 of Act VII (B.C.) of 1876 (the Land Registration Act).

10. In section 16 of the Bill a considerable change has been effected in section 8(*b*) of Act VII (B.C.) of 1880 by eliminating the grounds (2) and (4), viz, error, defect or irregularity in the proceedings and want of jurisdiction, on which a certificate may be cancelled by a Civil Court. The grounds for cancelment will now be only two, viz., that the amount had been paid before the certificate was made, and that no part of the amount stated in the certificate was due. This is the result of the correspondence with the High Court and the Board of Revenue. The former consider the present procedure for questioning the validity or correctness of a certificate to be extremely defective, as it involves two series of litigation—one before the Revenue authorities, the other before the Civil Courts. They proposed to leave the present procedure alone up to the service of the certificate. But the execution of the certificate they would leave to the Civil Court, allowing the judgment-debtor the choice of paying the amount or depositing the claim in Court so as to gain the right to resist execution. They wrote—"If the intervention of the Civil Court be thus made before, and not after, the certificate is enforced, there would seem to the Judges to be no reason for setting aside the certificate on the ground of any irregularity; for, if any irregularity has occurred of such a kind as to place the judgment-debtor at a disadvantage, the remedy would naturally be to delay the execution for a reasonable time. Nor would the Judges allow any objection to be taken on the ground of jurisdiction. They do not see why a debtor to the Crown should be permitted to raise questions, often very difficult to solve, as to the boundaries between administrative districts, and they would therefore limit his right strictly to disputing his indebtedness. If this system were adopted, no subsequent suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder by reason of one or the other not being warranted by the Act." It has been thought advisable to retain by section 23 the execution of certificates in the hands of the Collector, thus leaving the work to the authority most concerned in its proper performance, it being provided that the procedure in the Revenue Courts is to be as careful and accurate as in a Civil Court, the Code of Civil Procedure being equally followed in both. The section as drafted will maintain the right of objecting in the Revenue Court on technical grounds of irregularity, non-service of processes, and on the substantial ground of non-indebtedness; the reference to the Civil Court being only on the ground of non-indebtedness.

11. The Bill provides in section 18 for appeals, the present system of appeal to a Collector and then to a Commissioner being generally maintained. But the distinction between "Collector of a district" and "Collector" has been brought out, and it has been provided that (1) the appeals from his subordinates which will be ordinarily to the District Collector, may, with permission, be transferred for hearing to any subordinate Collector, and

(2) that appeals from any "Collector," *e.g.*, a Subdivisional Officer, may, with permission, be made to the District Collector instead of to the distant Commissioner. Some slight changes have been made in the power of revision in section 19.

12. The object of section 20 of the Bill is to give to the judgment-debtor whose property has been sold under the Certificate Procedure a right of redemption, on payment of the demand with penalty and interest, analogous to that which is given to judgment-debtors under section 174 of the Tenancy Act. It corresponds with section 53 of the Bill to amend the Revenue Sale Law. This provision has been adopted on the suggestion of the High Court. Cases occur in which properties are sold very much under their real value; and, although the judgment-debtor himself may be to blame for negligence, it is considered too severe a penalty to force a man, for neglect to pay a trifling sum, to have his estate sold for a portion of its value without opportunity of recovery. The judgment-debtor will be required to pay a heavy penalty (a portion of which should be paid to the purchaser as compensation) and a high rate of interest on the purchase-money: the time to be allowed for redemption will be short.

The principle involved in this section has quite recently been approved in the Supreme Legislative Council by the passing into Law of Act V of 1894, to amend the Code of Civil Procedure, by which a judgment-debtor is enabled to redeem his property after sale on payment of a penalty to compensate the purchaser.

13. In the latter half of section 21 of the Bill it has been thought worthwhile to reproduce the limitation regarding the recovery of an arrear of rent laid down in Schedule III, Part I, 2 (*b*), column 3 of Act VIII of 1885, and at the same time to declare that in respect of other application the ordinary law of limitation shall hold good.

14. In section 22 of the Bill all the sections of the Civil Procedure Code which are to apply to every execution issued to enforce a certificate have been stated distinctly, both by numbers and descriptions. Some of these sections are thus for the first time rendered applicable. The object of this change is to counteract the effect of the judgment of the High Court in the case of Sadhusaran Singh *versus* Panchdeo Lal (XIV, I. L. R., Calc., p. 1), which has given rise to considerable inconvenience. Section 19 of Act VII (B.C.) of 1880 declared that all the practice and procedure provided by the Code of Civil Procedure in respect of sales in execution of decrees should apply to every execution issued to enforce a certificate. In cases which came before the Board they held that section 311 *et seq.* of the Code of Civil Procedure (concerning applications to set aside sales) applied to cases of sale under Act VII (B.C.) of 1880: that a sale under a certificate was not a sale under Act VII (B.C.) of 1868 or Act XI of 1859, but a sale under the Code of Civil Procedure; and that, if immovable property was sold under a certificate, the sale was not a sale of an estate or a share, but of the rights and interests of the judgment-debtor. But in 1886 the High Court decided in Sadhusaran Singh's case that only the provisions of the Code of Civil Procedure up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and that the remedy of a judgment-debtor whose property has been wrongfully sold is not under sections 311 and 312, but by appeal to the Commissioner under section 2 of Act VII (B.C.) of 1868. The Board pointed out to Revenue officers that by this ruling all the provisions of Act XI of 1859 with regard to appeals against sales of estates became applicable. A Commissioner brought to notice the inconvenience caused by this ruling which necessitated all appeals being made to the distant Commissioner instead of an application being permitted under section 311 of the Civil Procedure Code to the Certificate Deputy Collector and an appeal to the Collector under section 588 of the Civil Procedure Code. The Board at once suggested legislation to provide for a simple procedure to afford a remedy on the spot, and to prevent sales of movable property being regulated by Acts which applied to sales of immovable property. It has also been pointed out that what passes by a sale under Act VII (B.C.) of 1880 is the right, title and interest of a judgment-debtor, so that it is inappropriate to give possession of an estate or share by a certificate under section 28 of Act XI of 1859. The changes now made by the Bill will secure that sections 311 and 312 of the Code of Civil Procedure will (among many others) be applicable, so that instead of appeals against certificate sales being required to be made to a Commissioner, and instead of a sale certificate being issued under section 28 of Act XI of 1859, and possession given under section 29 of the same Act of something which has not been sold, appeals will be made to the Court which held the sale, and possession be given under the Code of Civil Procedure.

15. Section 23 of the Bill gives to the Board of Revenue the power now vested in the High Court of making rules under section 287 of the Code of Civil Procedure regarding sales of immovable property, with a view to the Board's framing such rules as may be suitable to the circumstances of certificate sales. The rules of the High Court under section 287 have been found unsuitable in some respects as providing for a state of things which differs very considerably from that prevailing in certificate matters.

16. Provision is made by section 32 for the service of notices under the Code of Civil Procedure. In accordance with the system followed in other parts of the Bill the course has been adopted of declaring certain sections of that Code to be applicable to notices issued under the Bill, which is thus provided with a procedure entirely independent of any enactment relating to sales for arrears of land revenue. This helps to carrying out the plan of keeping distinct the two processes (1) for realizing the land revenue, (2) the recovery of public demands.

C. E. BUCKLAND.

The 7th March 1894.

No. 134T., dated Calcutta, the 17th April 1894.

From—GORDON LEITH, Esq., Assistant Secretary to the Government of Bengal, Legislative Dept.,

To—The Secretary to the Government of Bengal, Revenue Department.

I AM desired by the Select Committee, appointed on the 31st March 1894, to consider the Bills (1) to amend the Revenue Sale Law, and (2) to amend the Public Demands Recovery Act, 1880, to submit the following representation for the information of His Honour the Lieutenant-Governor.

2. The Select Committee desire, in the first place, to invite attention to the remarks of the Hon'ble the Advocate-General in Council on the 31st March, to the effect that the Bill to amend the Revenue Sale Law is beyond the power of the Bengal Legislative Council, inasmuch as by its section 55 it is proposed to debar all Civil Courts, including the High Court, from entertaining a suit for annulling a sale for arrears of revenue. They have reason to believe that a section to this effect was included in the Bill which was laid before the Government of India, and that no objection was taken to the Bill on this score. But they think that, having regard to the weight of the legal opinion above mentioned, it would be desirable to bring the matter specially to the notice of the Government of India, so as to avoid the possibility of the Bill being vetoed on this ground after much labour had been expended on it in the Bengal Legislative Council. It is suggested that this reference might be made simultaneously with the other measures I am now to suggest.

3. It appears to the Select Committee that the points of chief importance have been carefully set out in the Statements of Objects and Reasons attached to each of the two Bills, and that the matters of greatest interest were referred to by the Member in charge of the Bills in his speeches in Council on the 31st March, when he specially dwelt upon paragraphs 10, 11, 17, 18, 19, 20, 21, 25, of the Statement of Objects and Reasons in the case of the Revenue Sale Bill, and paragraphs 4, 5, 8, 9, 10, 11, 12, 14, 15, 16 of the corresponding Statement in the case of the Public Demands Recovery Bill. The Select Committee would suggest that the opinions of officers of Government and such associations, connected with land or otherwise, as it may be thought fit to consult, should be asked for with particular advertence to the sections of the Bills explained in these paragraphs, but they would welcome any criticisms which might be offered on other sections of the Bill not discussed in the paragraphs of the Statements above mentioned. As they will have to deal with the reports, they would express a hope that all criticisms should be directed as much as possible to separate sections, and not deal discursorily with the Bills at large.

4. Some members of the Select Committee wish, without expressing a final opinion at this stage, to impress on His Honour the Lieutenant-Governor the desirability of obtaining fully the views of all Revenue officers (1) on the sections 10-12 and 43 of the Revenue Sale Bill, containing the provisions which it is proposed to enact with regard to the service of notices, with certain prescribed information on defaulters; and (2) on section 76 of the same Bill, whereby the procedure of special registry is to be extended to all tenures, provided that the requirements of section 83 have been complied with. An opinion is entertained that these sections are specially fraught with possible consequences to the Land Revenue, so that their effect should be carefully considered before they are passed into law.

5. Some members are also of opinion that the fees proposed in clauses 2 to 5 of Schedule IV of the Revenue Sale Bill might have the effect of deterring zamindars from protecting their estates from sale by deposit of cash or promissory notes, and that the views of Revenue officers and others should be specially elicited on this point.

6. I am in conclusion to suggest that it would probably be of great use to all persons consulted if the correspondence which has passed since the papers were last published in connection with the Government Resolution of June 1890 could be made available for general information, and if this is not possible, that at least the members of the Select Committee may be furnished with a copy of the correspondence, so that they may be better acquainted with the inception, history and grounds of the Bills committed to them.

No. 2738, dated Darjeeling, the 16th May 1894.

From—C E. BUCKLAND, Esq, Secretary to the Govt. of Bengal, Revenue Dept,
To—The Solicitor to the Government of India.

I AM directed to request you to be so good as to lay before the Honourable the Advocate-General the following reference in connection with the Bill to amend the Revenue Sale Law now before the Bengal Legislative Council, and to obtain and forward to this Government his opinion thereon.

2. At the meeting of the Bengal Legislative Council held on the 31st March 1894, the Advocate-General is reported (*vide* the Supplement to the *Calcutta Gazette*, 18th April 1894, page 639) to have said that any attempt to deprive the High Court of its jurisdiction would be useless, because the Bengal Legislative Council has no power to interfere with the jurisdiction of the High Court, and he is understood to have meant thereby that the Bill to amend the Revenue Sale Law was beyond the power of that Council, inasmuch as by its section 55 it is proposed to debar all Civil Courts, including the High Court, from entertaining a suit for annulling a sale for arrears of revenue. Before addressing the Government of India on the subject, the Lieutenant-Governor would be glad to know if Sir Charles Paul's meaning has been rightly understood, and to be favoured with a fuller explanation of the grounds on which his statement in Council was based.

3. I am to add that, when the Draft Bill was laid before the Government of India, the Supreme Government observed as follows:—

"The 53rd section of the Draft Bill;" (now the 55th) "as it stands is open to the objection that it affects to debar the High Court from entertaining any suit such as might now be brought before it to set aside the sale of an estate sold for arrears of revenue; but this objection is purely technical, and can be met by the substitution of a provision to the effect that, save as provided in the Act, every sale made shall be final and irrevocable."

The Lieutenant-Governor cares very little how the desired object is attained, but on the whole would prefer to retain the section now numbered 55, if possible. By this section it is not attempted to debar the High Court, which is believed to have a general authority to intervene in any such case under its Charter, from entertaining a suit for annulling a sale for arrears of revenue, but to bar the jurisdiction of the lower Civil Courts: and the desirability of this, it should be remembered, was suggested by the Hon'ble Judges of the High Court themselves on the ground that it is most undesirable to have, as at present, two separate and parallel systems of jurisdiction, so that a party can apply first to the Collector and on to the Commissioner and the Board of Revenue, and can then begin afresh with the Munsif and appeal to the District Judge and the High Court. The Lieutenant-Governor desires to have the Advocate-General's opinion on the course to be pursued, and whether the provision suggested would be effective for the object in view.

4. A copy of the Bill to amend the Revenue Sale Law, as introduced into Council on the 31st March 1894, with a copy of the Statement of Objects and Reasons attached to the Bill, is enclosed.

Nos. 2739-61, dated Darjeeling, the 16th May 1894.

From—C E BUCKLAND, Esq, Secretary to the Govt of Bengal, Revenue Dept,
To—The Secretary to the Bengal Chamber of Commerce, Calcutta; Bengal National Chamber of Commerce, Calcutta; Eurasian and Anglo-Indian Association, Calcutta; British Indian Association, Calcutta, Indian Association, Calcutta; Central National Muhammadan Association, Calcutta; Faridpur People's Association, Faridpur; Bhagalpur Landholders' Association, Bhagalpur; Mymensingh Association, Mymensingh; Orissa Association, Cuttack; Murshidabad Association, Berhampur, Barisal People's Association, Barisal; Howrah People's Association, Howrah; Bihar Indigo-Planters' Association; Bogra People's Association, Bogra; Balasore National Society, Balasore; Bihar Landholders' Association, Bankipur; East Bengal Landholders' Association, Dacca; Rajshahi Association, Rampur-Boalia; Bali Sadharani Sabha, Bali; Uttarpara People's Association, Uttarpara; Burdwan Association, Burdwan; Islam Association, Chittagong.

I AM directed to forward copies of the Bills (1) to amend the Revenue Sale Law, and (2) to amend the Public Demands Recovery Act, 1880, as introduced into the Bengal Legislative Council on the 31st March 1894, together

with copies of the Statements of Objects and Reasons attached to those Bills, and to request that the Lieutenant-Governor may be favoured, as early as possible, with an expression of the opinion of the Chamber of Commerce / your Association on them.

2. The Select Committee appointed to consider the Bills has requested the Government to draw the attention of such Associations as it may be thought fit to consult to the points of chief importance contained in them, and to obtain their opinions regarding the policy involved in the contemplated changes of the law, and whether the draft sections will be effectual to carry out that policy. The matters referred to are those dealt with in the following paragraphs of the Statement of Objects and Reasons attached to each of the two Bills:—

REVENUE SALE BILL.

Paragraph of the Statement of Objects and Reasons.	Subject.	Sections of the Bill.
1	2	3
10	Service of notices of the date of sale.	10—12
11	Payment of Government dues by defaulting proprietors.	14, 15, and 18.
17	Attestation of issue of notifications and notices of sale.	43 and 59
18	Annulment of sale on the ground of irregularity in the service of notifications and notices.	49, 50, and 52.
19	Right of proprietors to redeem estates sold for arrears.	54
20	Civil Court debarred from entertaining suit for annulling sales for arrears of revenue.	55
21	Certificate of sales	57 and 58
25	Protection of tenures	73-83.

PUBLIC DEMANDS RECOVERY BILL.

4	Collector of the district to control and supervise certificate procedure.	4(1), (2) and 31.
5	Acts and sections to which certificate procedure is applicable, &c.	7 and 21
8	Petition of objection to certificate.	12
9	Collector may refer petitioner to the Civil Court.	13
10	Grounds of cancelment of certificate by Civil Court.	16 and 23
11	Appeals	18 and 19
12	Right of judgment-debtor to redeem property sold under certificate procedure.	20.
14	Sections of Civil Procedure Code applicable to execution issued to enforce certificate.	22
15	Board of Revenue to make rules suitable for certificate sales.	23
16	Service of notices	32

I am to ask that the opinions which may be offered on these points may be expressed with particular advertence to the sections of the Bills explained in the paragraphs of the Statements of Objects and Reasons. The Lieutenant-Governor would also welcome any criticisms which may be offered on other sections of the Bill not discussed in those paragraphs. It is desirable that all criticisms should be directed as much as possible to separate sections, and not deal discursorily with the Bills at large.

3. Some members of the Select Committee are of opinion that the fees proposed in clauses 2 to 5 of Schedule IV of the Revenue Sale Bill might have the effect of deterring zamindars from protecting their estates from sale by deposit of cash or promissory notes. I am to request the Chamber / your Association to be so good as to submit their views on this point.

Cir No. 10, dated Calcutta, the 16th May 1894.

From—C. E. Buckland, Esq., Secy. to the Govt. of Bengal, Revenue Dept.,
To—All Commissioners of Divisions.

I am directed to forward copies of the Bills (1) to amend the Revenue Sale Law, and (2) to amend the Public Demands Recovery Act, 1880, as introduced into the Bengal Legislative Council on the 31st March 1894, together with copies of the Statements of Objects and Reasons attached to those Bills, and to request that the Lieutenant Governor may be favoured, as early as possible, with an expression of your opinion and that of such Collectors in your Division as you may think fit to consult upon them.

2. The Select Committee appointed to consider the Bills has requested the Government to draw the attention of its chief officials to the points of chief importance contained in them, and to obtain their opinions regarding the policy involved in the contemplated changes of the law, and whether the draft sections will be effectual to carry out that policy. The matters referred to are those dealt with in the following paragraphs of the Statements of Objects and Reasons attached to the two Bills—

Revenue Sale Bill.

Paragraph of the Statement of Objects and Reasons.	Subject.	Sections of the Bill
1	2	3
10	Service of notices of the date of sale.	10-12.
11	Payment of Government dues by defaulting proprietors.	14, 15, and 18.
17	Attestation of issue of notifications and notices of sale.	43 and 59
18	Annulment of sale on the ground of irregularity in the service of notifications and notices.	49, 50, and 52.
19	Right of proprietors to redeem estates sold for arrears.	54
20	Civil Court debarred from entertaining suit for annulling sales for arrears of revenue.	55
21	Certificate of sale	57 and 58
25	Protection of tenures	73-83

PUBLIC DEMANDS RECOVERY BILL.

Paragraph of the Statement of Objects and Reasons	Subject.	Sections of the Bill
1	2	3
4	Collector of the district to control and supervise certificate procedure.	4(1), (2) and 31.
5	Acts and sections to which certificate procedure is applicable, &c.	7 and 21
8	Petition of objection to certificate.	12
9	Collector may refer petitioner to the Civil Court.	13
10	Grounds of cancelment of certificate by Civil Court.	16 and 23
11	Appeals	18 and 19
12	Right of judgment-debtor to redeem property sold under certificate procedure.	20
14	Sections of Civil Procedure Code applicable to execution issued to enforce certificate.	22
15	Board of Revenue to make rules suitable for certificate sales.	23
16	Service of notices. ...	32

I am to ask that the opinions which may be offered on these points may be expressed with particular advertence to the sections of the Bills explained in the paragraphs of the Statements of Objects and Reasons. The Lieutenant-Governor would also welcome any criticisms which may be offered on other sections of the Bills not discussed in those paragraphs. It is desirable that all criticisms should be directed as much as possible to separate sections, and not deal discursorily with the Bills at large.

3. His Honour would also be glad to be favoured with a full statement of your views and of those of the district officers whom you may think it desirable to consult (1) on the sections 10—12 and 43 of the Revenue Sale Bill, containing the provisions which it is proposed to enact with regard to the service of notices, with certain prescribed information, on defaulters, and (2) on section 76 of the same Bill, whereby the procedure of special registry is to be extended to all tenures, provided that the requirements of section 83 have been complied with. An opinion has been expressed that these sections are specially fraught with possible consequences to the land revenue, so that their effect should be carefully considered before they are passed into law.

4. Some members of the Select Committee are of opinion that the fees proposed in clauses 2 to 5 of Schedule IV of the Revenue Sale Bill might have the effect of deterring zamindars from protecting their estates from sale by deposit of cash or promissory notes. I am to request you to be so good as to submit your views, and to obtain those of the Collectors whom you may select for consultation on this point.

5. All Collectors in your Division should be asked to examine the figures of the financial year 1893-94, and to submit a statement showing (1) the number of sales of revenue-paying estates effected, (2) the number objected to in (*a*) revenue and (*b*) civil courts, (3) the different grounds of objection, and (4) the results, showing specially, where a sale has been reversed, on what grounds the decision was based.

6. Your reply to this reference should be submitted through the Board of Revenue.

No. 2770L.R.

COPY, with copies of the Bills and Statements of Objects and Reasons referred to, together with copies of the papers noted on the margin, forwarded to the Secretary to the Board of Revenue, Land Revenue Department, with reference to the correspondence ending with the Board's letter No. 821A., dated 12th September 1892, with the request that the Board will obtain and forward to Government, by the 1st November 1894, the reports of the Commissioners and selected Collectors and the statements called for in paragraph 5, with an expression of their own views.

Letter from this Government to the Government of India, No. 2299, dated 29th May 1893

Letter from the Government of India, No. $\frac{2329}{204}$, dated 20th September 1893.

Letter from the Government of India, No. $\frac{276}{56}$, dated 27th January 1894

Letter from the Government of India, No. $\frac{547}{56}$, dated 22nd February 1894

Letter from this Government to the Government of India, No. 1382, dated 7th March 1894.

By order of the Lieutenant-Governor of Bengal.

T. W. RICHARDSON,

Under-Secretary to the Govt. of Bengal.

CALCUTTA,
The 16th May 1894.

No. 439, dated Fort William, the 30th May 1894.

From—R. L. UPTON, Esq., Solicitor to the Government of India,
To—The Secretary to the Government of Bengal, Revenue Dept.

REFERRING to your No. 2738 of the 16th instant, I have the honour to forward herewith a copy of the Hon'ble the Advocate-General's opinion on the subject therein referred to.

OPINION.

THE effect of the proposed section 55 of the Bill is to oust the jurisdiction of the Civil Courts of the country. I am of opinion that the Bengal Legislature has no power to oust the jurisdiction of the courts of this country. It is not competent for it in any way to interfere with the constitution or jurisdiction of the High Court [see section 42 of the Indian Council Act, 1861, and I. L. R., 3 Calc., 126, also. The Collector of Thana *vs.* Bhaskar Mohadev Sheth, I. L. R., 8 Bomb., 264, and Prem Shanker Raghunathji *vs.* Government of Bombay, 8 Bomb. H. C. (A. C. J.) 195]. The Civil Courts of this country are now constituted and established by Act XII of 1887 of the Supreme Council. Under section 42 of the Indian Council Act, 1861, the Bengal Council can only repeal and amend any Laws and Regulations made prior to the coming into operation of that Act by any authority in India.

See also case in 8 Bomb. H. C. (A. C. J.), 195.

G. C. PAUL.

The 29th May 1894.

No. 188T.R., dated Darjeeling, the 15th June 1894.

From—C. E. BUCKLAND, Esq., Secretary to the Govt. of Bengal, Revenue Dept,
To—The Solicitor to the Government of India.

I AM directed to acknowledge the receipt of your letter No. 439, dated the 30th May 1894, forwarding a copy of the Hon'ble the Advocate-General's opinion on the reference contained in my letter No. 2738, dated the 16th May, to your address, in connection with the Bill to amend the Revenue Sale Law, which was introduced into the Bengal Legislative Council on the 31st March 1894, and to address you further as follows.

2. The Hon'ble the Advocate-General, in referring to section 55 of th Bill above mentioned, has cited cases to show that it is not competent for th

Bengal Legislature in any way to interfere with the constitution or jurisdiction of the High Court. With regard to this point, I am to observe that, as already stated in my letter of the 16th May, the object of section 55 is not to debar the High Court from entertaining a suit for annulling a sale for arrears of revenue, but to bar the jurisdiction of the lower Civil Courts. The Lieutenant-Governor is prepared to accept such emendation of the section as will make this clearer.

3. The remainder, however, of the Hon'ble Advocate General's opinion appears to require further consideration, and I am directed to request that you will be so good as to lay the matter again before him, with reference to the following observations. He is of opinion that the effect of the proposed section 55 of the Bill is to oust the jurisdiction of the Civil Courts of the country, and that the Bengal Legislature has no power to enact such a provision; and he goes on to say:—

"The Civil Courts of this country are now constituted and established by Act XII of 1887 of the Supreme Council. Under section 42 of the Indian Councils Act, 1861, the Bengal Council can only repeal and amend any laws and regulations made prior to the coming into operation of that Act by any authority in India." I am to ask that Sir Charles Paul's attention may be invited to section 5 of the Statute 55 and 56 Victoria, Chapter 14 (entitled the Indian Councils Act,* 1892, dated the 20th June 1892, being an Act to amend the Indian Councils Act, 1861), by which the Bengal Legislature has been empowered, with the previous sanction of the Governor-General, to repeal or amend as to Bengal any law or regulation made either before or after the passing of the Indian Councils Act, 1892, by any authority in India other than the Bengal Legislature.

* Published at pages 71 to 73, Part 1A of the *Calcutta Gazette* of 27th July 1892

4. As it appears therefore that the Bengal Legislature has, with the previous sanction of the Governor-General, the power to amend the jurisdiction of the Civil Courts below the High Court, as constituted by Act XII of 1887, so as to debar them from entertaining a suit for annulling a sale for arrears of revenue, I am to enquire whether, in these circumstances, the Hon'ble the Advocate-General sees any objection to the substitution of the following section for the present section 55 of the Bill:—

"Notwithstanding anything contained in Act XII of 1887, from and after the date on which this Act shall come into force no Civil Court subordinate to the High Court shall entertain a suit for annulling the sale of an estate, share of an estate, or an independent tenure sold for arrears of revenue."

5. If the Advocate-General sees any objection to the draft revised section set out in the preceding paragraph, I am to request that he may be asked to be so good as to state it, and in that case to say further whether he sees any impediment to the adoption of the suggestion of the Government of India mentioned in paragraph 3 of my letter of the 16th May 1894, and the substitution for the present section 55 of the Bill of the following section:—

"From and after the date on which this Act shall come into force, every sale made for an arrear of revenue shall, save as provided in the Act, be final and irrevocable."

6. If neither of these courses appears to the Advocate-General to be feasible, notwithstanding the enlargement of the powers of the Bengal Legislature by the Indian Councils Act, 1892, I am to request that Sir Charles Paul may be moved, with reference to the last sentence of paragraph 3 of my letter of the 16th May 1894, to state what course he would advise Government to pursue so as to attain the object in view, viz., to bar the Civil Courts below the High Court from entertaining suits for the annulment of sales for arrears of revenue. It will be remembered that, as stated in paragraph 3 of the letter just quoted, this suggestion emanated from the High Court, and I am to enclose copies of the correspondence noted in the margin, to show what the Hon'ble Judges themselves recommended. The paragraphs indicated in the margin are specially worthy of consideration.

(1) Letter from the High Court, No 2321, dated the 29th August 1891, paragraphs 16 18
(2) This Government's letter to the High Court, No 4431L R, dated the 17th December 1892.
(3) Letter from the High Court, No 36, dated the 5th January 1893
(4) Letter from this Government to the Government of India, No 2299L R, dated 29th May 1893, paragraph 8

No. 533, dated Fort William, the 2nd July 1894

From—R. L. UPTON, Esq., Solicitor to the Government of India.

To—The Secretary to the Government of Bengal, Revenue Department.

REFERRING to your No. 1887T.R., dated the 15th ultimo, I have the honour to forward herewith a copy of the Hon'ble the Advocate-General's opinion on the subject therein referred to.

Opinion.

I AM of opinion that under section 5 of 55 and 56 Victoria, Chapter 14, the Bengal Legislature, with the previous sanction of the Governor-General, has the power to pass an Act ousting the jurisdiction of the Civil Courts of the country subordinate to the High Court. The section now proposed for the present section 55 of the Bill will, in my opinion, do very well, with the exception of the words "notwithstanding anything contained in Act XII of 1887" for which I see no necessity.

G. C. PAUL.

The 29th June 1894.

No. 3456, dated Calcutta, the 11th July 1894.

From—C. E. BUCKLAND, Esq., Secy. to the Govt. of Bengal, Revenue Dept.,

To—The Secretary to the Government of India, Revenue and Agricultural Dept.

WITH reference to paragraph 2 of your letter No. $\frac{2919}{204}$, dated the 20th September 1893, I am directed to submit, for the information of the Government of India, a copy of the correspondence noted on the margin, which has passed between this Government and the Solicitor to the Government of India, relative to section 55 of the Bill to amend the Revenue Sale Law, now before the Bengal Legislative Council. The language of the Hon'ble the Advocate-General with reference to that section, at the meeting of the Bengal Legislative Council, held on the 31st March 1894, gave rise to fears lest the High Court should take umbrage at a supposed encroachment on their authority. Accordingly the correspondence cited above on the margin ensued, and the Government of India will be glad to know that in the opinion of the Advocate-General no objection can be taken to the language of the section which it is proposed to adopt. It will be seen that the change which is now proposed in the section of the Bill as laid before the Government of India with my letter No. 1382, dated the 7th March 1894, is merely to add the words "subordinate to the High Court" after the words "Civil Court."

Letter No. 2738, dated 16th May 1894, from this Government to the Solicitor to the Government of India

Letter No. 439, dated 30th May 1894, from the Solicitor to the Government of India, addressed to this Government, with enclosure.

Letter No. 188T R., dated 15th June 1894, from this Government, to the Solicitor to the Government of India.

Letter No. 533, dated 2nd July 1894, from the Solicitor to the Government of India, addressed to this Government, with enclosure

C. E. G. and others—Reg. No. 258C—200—11-8-94.